

**National Guard Regulation 500-5/
Air National Guard Instruction 10-208**

**Emergency Employment of Army and Other
Resources**

**National Guard
Domestic Law
Enforcement Support
and Mission
Assurance Operations**

**National Guard Bureau
Arlington, VA 22202-3231
August 18, 2010**

UNCLASSIFIED

SUMMARY of CHANGE

NGR 500-5/ANGI 10-208

National Guard Domestic Law Enforcement Support and Mission Assurance
Operations

August 18, 2010

This is a new publication.

Emergency Employment of Army and Other Resources

National Guard Domestic Law Enforcement Support and Mission Assurance Operations

By Order of the Secretary of Defense:

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General, USAF
Chief, National Guard Bureau

Official:

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History. This is a new publication in the 500 series.

Summary. This regulation/instruction prescribes policies, procedures, responsibilities, and direction for activities related to National Guard domestic law enforcement support and mission assurance operations. It governs the training, planning, preparations, and operations of National Guard units and forces in the Homeland, hereafter referred to as National Guard Domestic Operations (NGDO) as they relate to domestic law enforcement support and mission assurance operations, to include Provost Marshal, Antiterrorism, Force Protection and Security Operations, Threat Information Cells, National Guard Reaction Force, non-lethal capabilities, and critical infrastructure protection.

Applicability. This regulation/instruction applies to the National Guard Bureau (NGB) and to the Army National Guard (ARNG) and Air National Guard (ANG) of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands, hereafter referred to as the several states. It does not apply to National Guard units or forces when they are serving in their federal role in the Army National Guard of the United States or the Air National Guard of the United States. When operating in their federal status, these units and forces are under Department of Defense (DOD) direction and control. This regulation does apply to National Guard members conducting National Guard Counterdrug support operations; however, they shall refer to NGR 500-2/ANGI 1-0801, for the counterdrug support specific procedures and policy.

Proponent and exception authority. The proponent of this regulation/instruction is the Director, Domestic Operations, National Guard Bureau (NGB-J3/DO). The proponent has the authority to approve exceptions to this regulation/instruction that are consistent with controlling law and regulation. Submit requests for exception to policy as set forth in this regulation/instruction to the Chief, National Guard Bureau (CNGB), ATTN: NGB-J3/DO, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231. All requests must contain information detailing the reason(s) for the exception, that it will meet applicable federal, state, tribal, and local laws, and how it will affect any related state program(s).

Management Control Process. This regulation/instruction contains management control provisions, but does not identify key management controls that must be evaluated.

Supplementation. Supplementation of this regulation/instruction is prohibited without prior approval from the Chief, National Guard Bureau (CNGB), ATTN: NGB-J3/DO, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

Suggested Improvements. Users are encouraged to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Chief, National Guard Bureau (CNGB), ATTN: NGB-J3/DO, 1411 Jefferson Davis Highway, Arlington, VA 22202-3231.

Effective Date and Implementation. This regulation/instruction is effective immediately. The NGB (National Guard Bureau) Joint Staff and Service Directorates and the National Guard of the several states shall revise existing documents or develop implementing documents as necessary to comply with this regulation/instruction.

Distribution. A/F;X.

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Chapter 1 Introduction

1-1. Purpose

- a. Consolidate the policy and responsibilities for National Guard law enforcement support and mission assurance operations.
- b. Define consistent terminology and concepts for use by the National Guard Bureau and the National Guard of the several states for the planning and conduct of domestic law enforcement support and mission assurance operations.
- c. Provide direction for the planning and reporting requirements for National Guard domestic law enforcement support and mission assurance operations.
- d. Define National Guard capabilities for domestic law enforcement support and mission assurance operations.

1-2. References

Required and related publications and prescribed and reference forms are listed in Appendix A.

1-3. Explanation of Abbreviations and Terms

Abbreviations and terms used in this publication are listed in the glossary.

Chapter 2 Responsibilities

2-1. Chief, National Guard Bureau (CNGB)

- a. Serves as the principal advisor to the Secretaries of the Army and Air Force and to the Army and Air Force Chiefs of Staff on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States, including domestic law enforcement support and mission assurance operations.
- b. Serves as a principal advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving non-federalized National Guard forces and on other matters as determined by the Secretary of Defense.
- c. Ensures that the National Guard Bureau performs those functions described in DOD Directive 5105.77 as needed to support the conduct of National Guard domestic law enforcement support and mission assurance operations.
- d. Serves as the Department of Defense's official channel of communication with the Adjutants General (TAGs), but has no authority to command the National Guard.
- e. Assists the Adjutants General in assessing the impact of requested law enforcement support activities on the military training and readiness of the National Guard.
- f. Develops, maintains, and promulgates National Guard Domestic Operations readiness and reporting systems and processes.
- g. Prescribes the law enforcement and mission assurance training discipline and training requirements for the Army National Guard (ARNG) and the Air National Guard (ANG).
- h. Assists the Secretary of Defense in facilitating and coordinating the use of National Guard personnel and resources operating under Title 32 status or in support of state missions with other federal agencies, the TAGs of the several states, U.S. Joint Forces Command, and with the Combatant Commands with geographic responsibility for the United States.

2-2. Director, Army National Guard (DARNG)

- a. Serves as the conduit between the Army Chief of Staff and the CNGB in all matters relating to ARNG involvement in National Guard Domestic Operations, including National Guard domestic law enforcement support and mission assurance operations.
- b. Directs resources to support domestic operations.
- c. Administers Army National Guard resources for force structure, personnel, facilities, training, and equipment.

2-3. Director, Air National Guard (DANG)

- a. Serves as the conduit between the Air Force Chief of Staff and the CNGB in all matters relating to ANG involvement in National Guard Domestic Operations, including National Guard domestic law enforcement support and mission assurance operations.
- b. Directs resources to support domestic operations.
- c. Administers Air National Guard resources for force structure, personnel, facilities, training, and equipment.

2-4. Adjutant General (TAG)

- a. Typically serves, in accordance with state law, as the principal advisor to the Governor on military matters. The Adjutant General (or Commanding General, where appropriate) directs and oversees the daily activities of the state National Guard in order to accomplish the statutory and regulatory functions assigned.
- b. Maintains the training and readiness of their assigned forces, ensuring that those forces are able to conduct all assigned state and federal missions, including National Guard domestic law enforcement support and mission assurance operations.
- c. Supports the CNGB in his/her role as the channel of communications between the several states and the Secretary of Defense on matters relating to the National Guard. Operates and maintains a Joint Operations Center (JOC) with the capability to receive and respond to classified messages, execute command and control operations, and provide situational awareness of National Guard activities and operations.
- d. Complies with the reporting requirements specified in this publication.

2-5. Director, Joint Staff, National Guard Bureau

- a. Directs the Joint Staff of the National Guard Bureau and is subordinate to the CNGB.
- b. Leads and directs NGB Joint Staff actions to assist the CNGB in accomplishing his/her responsibilities for the strategic direction of the National Guard forces; their operation under unified command; and their integration into an efficient team of land and air forces.
- c. Assists the CNGB in the decision making and execution process of National Guard missions and performs such other duties as the CNGB may prescribe.
- d. Coordinates NG state-to-state assistance if requested.
- e. Directly supervises the National Guard Bureau Provost Marshal.

2-6. National Guard Bureau Provost Marshal

- a. Is a member of the CNGB's special staff.
- b. Serves as the principal advisor to the CNGB and all senior National Guard Bureau leadership on all issues related to force protection, law enforcement, antiterrorism, security, critical infrastructure protection and domestic threats.
- c. Serves as the primary liaison on the NGB staff to military and civil law enforcement agencies.
- d. Responds to requests for information relevant to criminal intelligence and law enforcement sensitive information in accordance with governing directives, laws and regulations.

2-7. National Guard Bureau J-34 Division Chief (NGB J-34)

- a. Is the NGB J-3's principal advisor on all issues related to force protection, law enforcement, antiterrorism, security and domestic threats.
- b. Oversees the management and resourcing of National Guard domestic law enforcement support and mission assurance capabilities.
- c. Facilitates, develops and supports, as appropriate, the training discipline and training requirements for National Guard domestic law enforcement support and mission assurance operations.
- d. Develops guidance and direction as needed to support National Guard domestic law enforcement support and mission assurance operations, including the integration and coordination of joint, interagency and intergovernmental matters.
- e. Maintains operational awareness of all National Guard law enforcement operations to include state provost marshal functions, critical incident response and National Guard Reaction Forces.
- f. Develops National Guard critical infrastructure program strategic policy guidance.
- g. Is the NGB's antiterrorism and force protection officer.
- h. Serves as the proponent for the NGB Antiterrorism Strategic Plan.

2-8. State Provost Marshal

- a. Serves as the principal advisor to the Adjutant General on all issues related to force protection, law enforcement, antiterrorism, physical security, critical infrastructure protection and domestic threats, and other matters as directed by the TAG.
- b. Supports the NGB Provost Marshal as needed with the development of National Guard policies and procedures.

2-9. State J-34 Division Chief

- a. Is the State J-3's principal advisor on all issues related to force protection, law enforcement, antiterrorism, security and domestic threats.
- b. Oversees the management and resourcing of state National Guard domestic law enforcement support and mission assurance capabilities.
- c. Facilitates, develops and supports, as appropriate, the training discipline and training requirements for state National Guard domestic law enforcement support and mission assurance operations.
- d. Develops guidance and direction as needed to support state National Guard domestic law enforcement support and mission assurance operations, including the integration and coordination of joint, interagency and intergovernmental matters.
- e. Maintains operational awareness of all state National Guard law enforcement operations.
- f. Develops state National Guard critical infrastructure program strategic policy guidance.
- g. Serves as the proponent for the state's Antiterrorism Strategic Plan.

2-10. State Antiterrorism Officer

- a. Develops an integrated JFHQ-State antiterrorism plan.
- b. Develops and manages a detailed antiterrorism action plan designed to ensure the achievement of established antiterrorism goals and performance objectives.
- c. Completes the annual JFHQ-State antiterrorism program report.

**Chapter 3
Policy**

3-1. General

- a. It is the policy of the Department of Defense and the National Guard Bureau that the National Guard shall cooperate with and provide military assistance to civil authorities as directed by and consistent with applicable state and federal laws, policies, directives and executive orders. This military assistance to civil authorities includes domestic law enforcement support and mission assurance operations.
- b. The statuses under which members of the National Guard operate while providing domestic law enforcement support or conducting mission assurance operations determine which policies apply during those operations. Unless ordered into federal status, members of the National Guard serve under a state chain of command, and are governed by state laws, policies, directives and executive orders. When National Guardsmen are ordered into federal status, federal policies apply, and a federal chain of command is observed. The President and the Governor define the circumstances under which the National Guard will be involved in domestic law enforcement support and mission assurance operations in their federal and state roles respectively.

3-2. State Policy

State laws and policies govern the use of National Guard Soldiers and Airmen in support of domestic law enforcement support and mission assurance operations while serving in state active duty and US Code, Title 32 statuses. State laws and policies authorize National Guard members in either Title 32 or state active duty (SAD) status to support law enforcement agencies and are implemented through state plans and policies. As most National Guard operations in support of law enforcement and mission assurance are conducted in a non-federalized status, a clear understanding of applicable state policies is critical to mission success. It is strongly recommended that state commanders receive a legal briefing addressing state specific laws, policies, directives and executive orders from their Judge Advocate General prior to conducting domestic law enforcement support and mission assurance operations within their respective states.

a. Criteria for the use of the National Guard operating in a state status in support of domestic law enforcement and mission assurance operations are defined within the laws, policies, directives and executive orders that govern the specific state in which operations are conducted.

b. Department of Defense policies and directives do not address National Guard assets in a non-federalized status conducting state operations approved by the Governor in support of local and/or state civil authorities. However, there exists potential for such state operations to result in confrontation, use of lethal force, or national media attention. Therefore, the Adjutants General shall inform the Chief, National Guard Bureau (CNGB) of such support. The CNGB shall then inform the Secretary of Defense, Chairman of the Joint Chiefs of Staff (CJCS), and the Joint Director of Military Support (JDOMS).

3-3. Federal Policy

US Code, Title 10, Chapter 18, Military Support for Civilian Law Enforcement Agencies, authorizes the Department of Defense, including National Guard members serving in Title 10 status, to support law enforcement agencies and is implemented through policy and direction including Department of Defense (DOD) directives. It is DOD policy to cooperate with civilian law enforcement officials to the extent that such cooperation is consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law.

a. All requests by civil authorities for military assistance from the Department of Defense, including National Guard in a Title 10 status, shall be evaluated by the DOD approval authorities against the following criteria:

- (1) Legality (compliance with laws).
- (2) Lethality (potential use of lethal force by or against DOD Forces).
- (3) Risk (safety of DOD Forces).
- (4) Cost (who pays, impact on DOD budget).
- (5) Appropriateness (whether the requested mission is in the interest of the DOD to conduct).
- (6) Readiness (impact on the DOD's ability to perform its primary mission).

b. The Secretary of Defense retains approval authority for domestic law enforcement support and mission assurance operations involving: DOD support to civil disturbances; DOD responses to acts of terrorism; and DOD support that will result in a planned event with the potential for confrontation with specifically identified individuals and/or groups or will result in the use of lethal force. DOD Directive 3025.1 outlines immediate emergency response authority for commanders.

c. The process for requesting military assistance by civil agencies and the approval authorities for such requests is outlined in DOD Directive 3025.15. All requests for support from state and local agencies must be in writing. The employment of National Guard forces operating in a Title 10 status in support of domestic civil disturbances may be authorized by the President. When requested by the Attorney General and approved by the Secretary of Defense or when authorized by the President, the Secretary of Defense shall employ federalized National Guard forces under rules for the use of force approved by General Counsel of the Department of Defense and the U.S. Attorney General. The Secretary of the Army, as Executive Agent for the Secretary of Defense, and with the advice and assistance of the Chairman of the Joint Chiefs of Staff and the Joint Director of Military Support, shall direct the required DOD assistance.

3-4. Interagency Coordination

a. The successful conduct of domestic law enforcement support and mission assurance operations by National Guard forces operating in both state and federal status requires interagency coordination. It is the policy of the Department of Defense that active military forces, including the National Guard operating in a Title 10 status, must coordinate with other government agencies, including law enforcement agencies when providing military support to civil authorities. This policy is directed by federal statute, Title 10, Title 32 and the FY 2008 National Defense Authorization Act, and codified in the following Department of Defense doctrine and direction:

- (1) Joint Publication 3-08
- (2) Joint Publication 3-27
- (3) Joint Publication 3-28
- (4) DOD Directive 5105.77

b. National Guard domestic law enforcement support and mission assurance operations are conducted in a complex environment with literally thousands of different jurisdictions and agencies. They vary in scale and scope and are most frequently conducted in support of local, tribal, and state authorities. This complex environment necessitates a synchronized, coordinated and integrated approach to ensure effective and efficient operations with

interagency partners. Comprehensive planning is a critical enabler to mission success when responding to both immediate and deliberate requests for support.

c. The *National Response Framework* (NRF) is a guide to how the Nation conducts all-hazards response. It is built upon scalable, flexible, and adaptable coordinating structures to align key roles and responsibilities across the Nation, linking all levels of government, nongovernmental organizations, and the private sector. It is intended to capture specific authorities and best practices for managing incidents that range from the serious but purely local, to large-scale terrorist attacks or catastrophic natural disasters.

(1) The National Guard of the several states and the National Guard Bureau shall consider their roles, both as state and federal responders in the NRF during planning and conduct of domestic law enforcement support and mission assurance operations.

(2) See paragraph 8-4 for a more detailed discussion of NRF planning considerations.

d. The National Incident Management System (NIMS) provides a consistent nationwide approach for federal, state, tribal, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, recover from and mitigate domestic incidents, regardless of cause, size or complexity. NIMS includes a core set of concepts, principles, terminology, and technologies covering the Incident Command System (ICS); Multiagency Coordination Systems (MCS); unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.

(1) This framework forms the basis for interoperability and compatibility, enabling a diverse set of public and private organizations to conduct well integrated and effective incident management operations.

(2) The National Guard and the National Guard Bureau shall operate consistent with the NIMS as implemented within each state unless doing so would lead to compromising operational missions or disrupting military command authority.

(3) See paragraph 8-5 for a more detailed discussion of NIMS planning considerations.

3-5. Cross Border Operations in Canada or Mexico

a. The Canadian or Mexican and US Federal Governments must establish and approve the legal authority prior to the National Guard of the United States conducting operations in Canada or Mexico. The US government may call upon National Guard members to cross international borders into the countries of Canada or Mexico to assist with civil support or humanitarian missions. A request to provide this type of support would most likely follow an event that overwhelms the supported country's military capacity to support their civilian government. The requesting country would prepare a diplomatic note outlining the situation and the requested assistance and pass it through diplomatic channels. The President is the approval authority, determines the extent of support, and directs through the Secretary of Defense any military participation as part of the overall U.S. support package. Any NG forces that would form part of this support package would be ordered to a Title 10 status and operational command transferred to USNORTHCOM.

b. Absent a national emergency or other event requiring involuntary mobilization, Guardsmen providing Title 10 support would be placed in a Title 10 status only after receiving the consent of their Governor.

c. In the case of preplanned large scale events such as the Olympics, capability gaps may be identified in advance of the event through a formal request from a foreign government.

d. Any military operation conducted in another country must be performed in a Title 10 status and comply with existing status-of-forces agreements (SOFA). Currently, Canada and the U.S. fall under the NATO SOFA. There is no SOFA with Mexico.

e. Rules for the use of force, rules of engagement (RUF/ROE), and the decisions regarding the arming of Guardsmen (even non-lethal capability) must be established well in advance with the host country.

f. Commander USNORTHCOM will have command and control of most National Guard forces operating in Canada or Mexico.

g. All personnel and equipment scheduled to cross an international border should be coordinated in advance of the crossing with the U.S. Customs and Border Protection Field Operations Office at the ports of entry.

h. Regional arrangements.

(1) While it may be possible for National Guard personnel to respond to another country as part of a regional agreement, the National Guard may only do so in a Title 10 status.

(2) The Commander of USNORTHCOM and the Commander of Canada Command have signed a Civil Assistance Plan that provides a framework for military-to-military support between the U.S. and Canada for DSCA operations. This plan provides the process, expectations, and administrative details in order to expedite military

support. This plan is not intended to be a standing agreement to conduct military operations, nor a mechanism to provide direct support from one county's military to the civil authorities of another.

Chapter 4

Authorities and Restrictions

4-1. The National Guard

The National Guard maintains a unique "dual status" with both state and federal roles and missions. This dual status is rooted in Article 1, Section 8 of the Constitution. The Constitution placed the responsibility of "organizing, arming, and disciplining the militia..." upon Congress, and reserved the training "according to the discipline prescribed by Congress..." to the states. These constitutionally-based dual roles and missions result in each Guardsman holding memberships in either the Army or Air National Guard of his or her state and also in the Army or Air National Guard of the United States. The U.S. Code describes this unique dual-status as "in federal service" (Title 10), and "when not in federal service" (state active duty or Title 32). Federal service is codified in Title 10 of the U.S. Code while non-federal service is covered in Title 32 of the U.S. Code and applicable state law. Hence, the National Guard of the several states may perform state roles and missions in either state active duty of Title 32 status, while only performing their federal training and ancillary federal missions in Title 32 status. Purely federal roles and missions performed as a reserve of the armed forces, i.e. in the Army or Air National Guard of the United States, are performed in a Title 10 status. Conducting National Guard activities under the appropriate state or federal statute is important for establishing presidential or gubernatorial commander in chief authority, operational command and control authority, and funding sources.

a. Authorities for the Army and Air National Guard when not in Federal service (state active duty or Title 32). When not in active federal service, members of the National Guard are administered, armed, equipped, and trained in their status as members of the Army National Guard and the Air National Guard of the several states per Title 10 USC sections 10107 and 10113.

b. Authorities for National Guard Operations in a State Active Duty Status. Unlike federal active duty and federal reserve forces such as the Army and Air Force Reserve, all National Guard personnel and equipment remain accessible to the Governor for state or local emergencies, unless otherwise provided by law. States are free to employ their National Guard forces under state control for state purposes and at state expense as provided in the state's constitution and statutes. As such service is performed in accordance with state law, National Guard members performing this type duty are said to be in "State Active Duty status," meaning that command and control rests solely with the Governor and the state or territorial government and that state government bears all of the associated costs.

c. Authorities for National Guard Operations in a Title 32 Status.

(1) Title 32 U.S. Code, Section 502 provides the authority for the use of National Guard Soldiers and Airman for training and other duty as prescribed by the Secretary of the Army or the Secretary of the Air Force. In accordance with Title 32 USC Section 502(f)(1), the National Guard may be ordered to perform "other duty" to respond to domestic emergencies or other needs. This authority has been employed to provide airport security, to protect the borders, and to respond to natural disasters. In accordance with Title 32 USC Section 502(f)(2)(a), the President or Secretary of Defense may request that the National Guard perform other operations or missions. In accordance with Title 32 USC Section 502(f)(2)(b), the National Guard may also provide instruction to active duty forces, foreign military forces, DOD contractors, or DOD civilians, but only in the United States, Puerto Rico, or U.S. possessions. Although these duties are wholly federally funded, for all such duty, the National Guard remains under the command and control of the respective Governor.

(2) Title 32 U.S. Code, Chapter 9 states the Secretary of Defense may provide funds to a Governor to employ the National Guard to conduct homeland defense activities that the Secretary determines to be necessary and appropriate. As defined in Title 32, Section 901, "homeland defense activity" means an activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States. The Governors of the States may request funding for:

(a) Deliberate, Planned Activities. Requests may be submitted prior to the anticipated date of a planned homeland defense activity.

(b) Exceptional Circumstances. Requests may be submitted during or after National Guard execution of a homeland defense activity in a State Active Duty status. Governors shall submit the request as quickly as

circumstances permit allowing members to be subsequently placed in full-time National Guard duty status (section 502(f) of Title 32).

(c) Specific procedures for Governors to request homeland defense activity funding are contained within Department of Defense Directive 3160.01.

(3) Army regulations and Air Force instructions govern the National Guard not in the active federal service in the same manner as they do the regular components, when such regulations or instructions have been made applicable to the National Guard. Specific applicability is indicated in departmental regulations and instructions.

d. Authorities for National Guard Operations in a Federal Status (Title 10).

(1) Members of the Army National Guard and the Air National Guard are not in active federal service except when ordered or called into active federal service under proper authority. National Guard Soldiers and Airmen serving in federal status as members of the Army or Air National Guard of the United States are governed by the same authorities as their respective Title 10 service components.

(2) When National Guard Soldiers and Airmen are called to active federal service by the President or Secretary of Defense to conduct domestic operations in the homeland, they will receive orders assigning them to an appropriate combatant commander.

(3) In accordance with the Insurrection Act (10 USC §§ 331-335) and 10 USC § 12406, the President may call into federal service members and units of the National Guard of any State in such numbers as he considers necessary whenever the United States, or any of the territories, commonwealths, or possessions, is invaded or is in danger of invasion by a foreign nation; there is a rebellion or danger of a rebellion against the authority of the Government of the United States; or the President is unable with the regular forces to execute the laws of the United States to repel the invasion, suppress the rebellion, or execute those laws. Orders for these purposes shall be issued through the governors of the States or, in the case of the District of Columbia, through the Commanding General, Joint Force Headquarters, District of Columbia National Guard.

4-2. Command and Control Authorities

a. The protection of life, property, and the maintenance of law and order within the territorial jurisdiction of any state is the primary responsibility of civil authorities. The National Guard has the primary responsibility for providing military assistance to state and local government agencies during civil disturbances and other domestic emergencies. The National Guard normally serves on state active duty or Title 32 status when providing support during these operations, and is under the command of the state's Governor, in accordance with state law.

b. The Governor is the commander in chief of all Army and Air National Guard units within his or her jurisdiction, which are not in active federal service. Governors may authorize the use of the National Guard to assist civil authorities and support law enforcement activities according to state law or the state constitution.

c. The President of the United States is the Commander in Chief of the National Guard of the District of Columbia. Command is exercised through the Secretary of Defense and the Commanding General, Joint Force Headquarters, District of Columbia National Guard. The Secretary of Defense has delegated his command authority to the Secretary of the Army for the District of Columbia Army National Guard and the Secretary of the Air Force for the District of Columbia Air National Guard. The Mayor of the District of Columbia, or the United States Marshal for the District of Columbia, or the National Capital Service Director, may request the Commander in Chief to aid them in suppressing such violence and enforcing the laws.

d. National Guard forces operating in Title 32 or state active duty statuses remain under the command of National Guard officers, and missions are executed through the National Guard chain-of-command in coordination with civil authorities.

e. Out-of-state National Guard forces assisting under the Emergency Management Assistance Compact (EMAC) remain under the operational control of their regular chain of command; however, they are under the tactical control of the receiving state's National Guard authorities.

f. National Guard Dual Status. A unique command and control relationship may be established when federalized and non-federalized military forces operate together. Title 32 USC, Section 325 allows a National Guard commander to still fulfill National Guard requirements while serving on active duty, if in command of a National Guard unit, if the President authorizes such service in both duty statuses. Additionally, the Governors of the several states or the Commanding General of the District of Columbia National Guard, as the case may be, must consent to such service in both duty statuses. A National Guard dual status commander retains his state commission when ordered to active duty under Title 10 USC. As such, the "dual status" commander is able to command National Guard and federal Title 10 forces via separate state and federal chains of command.

g. Title 10 Commander. Title 32 USC, Section 315 authorizes the Secretaries of the Army and Air Force to detail a Title 10 USC officer to a state National Guard. An officer so detailed may accept a commission in the Army

National Guard or the Air National Guard with the consent of the President and the state Governor involved. By doing so, a Title 10 USC officer may be placed in command of National Guard forces. On rare occasion, such an officer may be placed in dual command of state National Guard and Title 10 USC forces. When this happens, such a commander must establish separate state and federal chains of command. The appointment of a dual status commander under Title 32 USC, Section 315 could raise potential issues under the Posse Comitatus Act. Before such an appointment is made, consultations with the state staff judge advocate must occur.

h. The intent of dual status command is coordinating operations to attain unity of effort. A memorandum of agreement (MOA) must be signed by the Governor and the President or their respective designees before a dual status command can be established. The MOA should be prepared by staff judge advocates from both chains of command to ensure that the concerns of both are addressed. MOAs may be prepared in advance of known events such as a national special security event (NSSE).

(1) The dual status commander will receive orders from a federal chain of command and a state chain of command. The dual status commander should take care to ensure that the orders from the respective chains of command given to the forces are kept separate.

(2) While the dual status commander may receive orders from two chains of command, it must be recognized that the dual status commander has a duty to exercise all authority in a completely mutually exclusive manner, i.e., either in a federal or state capacity, but never in both capacities at the same time.

(3) The assigned or attached forces are not dual status. The dual status commander should take care to ensure that the missions of the forces are kept separate. This is best accomplished by maintaining separate staffs for the National Guard and Title 10 USC forces; especially separate J-2s, J-3s, and legal advisors, so that the separate chains of command remain distinct.

i. Combatant Commands.

(1) United States Northern Command (USNORTHCOM) is the DOD combatant commander with responsibility for most of the United States homeland. USNORTHCOM anticipates and conducts homeland defense and civil support operations involving Title 10 military forces within its assigned area of responsibility (AOR) to defend, protect, and secure the United States and its interests. USNORTHCOM's AOR includes air, land and sea approaches and encompasses the continental United States, Alaska, Canada, and Mexico. It also includes the surrounding continental waters out to approximately 500 nautical miles, the Gulf of Mexico and the Straits of Florida.

(2) Currently, USNORTHCOM is responsible for Defense Support to Civil Authorities (DSCA) involving Title 10 military forces for the District of Columbia, Puerto Rico and the U.S. Virgin Islands for natural disaster responses.

(3) For all situations not pertaining to natural disasters, United States Southern Command (USSOUTHCOM) is responsible for DSCA involving Title 10 military forces for Puerto Rico and the U.S. Virgin Islands.

(4) United States Pacific Command (USPACOM) is responsible for homeland defense and DSCA involving Title 10 military forces for Hawaii and US territories and possessions in the Pacific.

4-3. Legal Considerations

a. Involve the state judge advocate at all phases of a National Guard law enforcement support operation as the legal environment during such operations is a complex environment. National Guard forces shall operate within the laws that govern the specific state in which operations are conducted. Failure to heed applicable laws may result in criminal or civil personal liability.

b. The Posse Comitatus Act. With the September 11, 2001, attacks on the United States the roles of both the military and law enforcement in the defense of the U.S. homeland have been reexamined. Congress reaffirmed the intent of the Posse Comitatus Act in the Homeland Security Act of 2002, and the Executive Branch reasserted the President's inherent constitutional powers as justifying certain exceptions to the Act. In this context, actions previously considered unworkable under the Act may now be possible with the appropriate level of advance approval. National Guard members called to state active duty or in a Title 32 status participating in a domestic law enforcement support operation are subject to the laws of their state, but do not come under the restrictions imposed by the Posse Comitatus Act. The act remains important to the National Guard because it is enforceable when Guardsmen operate under Title 10 authority. Furthermore, the Posse Comitatus Act should be understood to realize the restrictions and authorities of Title 10 forces participating in the same domestic law enforcement operation. See Appendix D for a further discussion of the Posse Comitatus Act.

c. The Federal Tort Claims Act (FTCA). The FTCA, 28 U.S. Code, §§ 2671-2680, provides a limited waiver of the Federal Government's sovereign immunity when its employees are negligent within the scope of their

employment. National Guard troops in Title 10 or Title 32 status are considered United States employees for the purposes of the FTCA, and as such, negligent or wrongful acts or omissions by National Guard personnel in a Title 10 or Title 32 status providing law enforcement support may be covered under the FTCA. National Guard forces activated in a state active duty status are not considered employees of the United States, and potential claims arising out of the activities of these forces should be directed to state authorities.

(1) The FTCA provides that the government is liable if a federal law enforcement officer commits assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. The government is not liable if the claim against federal law enforcement officers is for libel, slander, misrepresentation, deceit, or interference with contract.

(2) Potential tort claims against National Guard members providing law enforcement support in a Title 10 or Title 32 status should be referred immediately to the state Judge Advocate General (JAG). The JAG assist by ensuring that potential claims are documented, available information concerning the claims is collected, and serve as the liaison between the state and Area Claims Offices.

d. Acquisition of Information Concerning Persons and Organizations Not Affiliated With the Department of Defense.

(1) DOD Directive 5200.27 establishes DOD policy, limitations, procedures, and operational guidance pertaining to the collecting, processing, storing, and dissemination of information concerning persons and organizations not affiliated with the DOD. Applicable to federalized forces under Title 10 and other authorities, DOD Directive 5200.27 defines policy that is based on public law and the US Code. Various states may have the same or similar provisions. Consult the state staff judge advocate for current information collecting restrictions applicable to your specific National Guard support to civil law enforcement mission. DOD policy is summarized below to provide a basic guideline for protecting the rights of all persons.

(a) DOD policy prohibits collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the DOD, except in those limited circumstances where such information is essential to the accomplishment of certain DOD missions.

(b) Information-gathering activities shall be subject to overall civilian control, a high level of general supervision and frequent inspections at the field level.

(c) Where collection activities are authorized to meet an essential requirement for information, maximum reliance shall be placed upon domestic civilian investigative agencies, federal, state, and local.

(d) In applying the criteria for the acquisition and retention of certain information, due consideration shall be given to the need to protect DOD functions and property in the different circumstances existing in geographic areas outside the United States.

(2) Authorized Activities. The DOD Components are authorized to gather information essential to the accomplishment of the following defense missions:

(a) Protection of DOD Functions and Property. Information may be acquired about activities threatening defense military and civilian personnel and defense activities and installations, including vessels, aircraft, communications equipment, and supplies.

(b) Personnel Security. Investigations may be conducted in relation to the following categories of persons:

1. Members of the Armed Forces, including retired personnel, members of the Reserve Components, and applicants for commission or enlistment.

2. DOD civilian personnel and applicants for such status.

3. Persons having need for access to official information requiring protection in the interest of national defense under the DOD Industrial Security Program or being considered for participation in other authorized DOD programs.

(3) Operations Related to Civil Disturbance. The U.S. Attorney General is the chief civilian officer in charge of coordinating all Federal Government activities relating to civil disturbances. Upon specific prior authorization of the Secretary of Defense or his designee, information may be acquired that is essential to meet operational requirements flowing from the mission assigned to the DOD to assist civil authorities in dealing with civil disturbances. Such authorization will only be granted when there is a distinct threat of a civil disturbance exceeding the law enforcement capabilities of state and local authorities.

(4) Prohibited Activities.

(a) The acquisition of information on individuals or organizations not affiliated with the DOD will be restricted to that which is essential to the accomplishment of assigned DOD missions.

(b) No information shall be acquired about a person or organization solely because of lawful advocacy of measures in opposition to government policy.

- (c) There shall be no physical or electronic surveillance of federal, state, or local officials or of candidates for such offices.
 - (d) There shall be no electronic surveillance of any individual or organization, except as authorized by law.
 - (e) There shall be no covert or otherwise deceptive surveillance or penetration of civilian organizations unless specifically authorized by the Secretary of Defense, or his designee.
 - (f) No DOD personnel will be assigned to attend public or private meetings, demonstrations, or other similar activities for the purpose of acquiring information, the collection of which is authorized by DOD Directive 5200.27 without specific prior approval by the Secretary of Defense, or his designee. An exception to this policy may be made by the local commander concerned, or higher authority, when, in his judgment, the threat is direct and immediate and time precludes obtaining prior approval. In each such case, a report will be made immediately to the Secretary of Defense, or his designee.
 - (g) No computerized data banks shall be maintained relating to individuals or organizations not affiliated with the DOD, unless authorized by the Secretary of Defense, or his designee.
- (5) Operational Guidance.
- (a) Nothing in DOD Directive 5200.27 shall be construed to prohibit the prompt reporting to law enforcement agencies of any information indicating the existence of a threat to life or property, or the violation of law, nor to prohibit keeping a record of such a report.
 - (b) Per DOD Directive 5200.27, nothing shall be construed to restrict the direct acquisition by overt means.
 - (c) Access to information obtained under the provisions of DOD Directive 5200.27 shall be restricted to Federal Governmental agencies that require such information in the execution of their duties.
 - (d) Information within the purview of DOD Directive 5200.27, regardless of when acquired, shall be destroyed within 90 days unless its retention is required by law or unless its retention is specifically authorized under criteria established by the Secretary of Defense, or his designee.
 - (e) DOD Directive 5200.27 does not abrogate any provision of the *Agreement Governing the Conduct of Defense Department Counterintelligence Activities in Conjunction with the Federal Bureau of Investigation*, nor preclude the collection of information required by federal statute or executive order.
- e. Privacy Restrictions. DOD Directive 5400.11 establishes DOD policy for the protection of individuals, personal information, individual records, and the system of records containing personal information. Applicable to federalized forces under Title 10 and other authorities, DOD Directive 5400.11 defines policy based on public law and the US Code. Various states may have the same or similar provisions. Consult the state staff judge advocate for privacy restrictions applicable to your specific National Guard support to civil law enforcement mission.
 - f. Release of Information. The responsibility for the release of information to the public concerning law enforcement operations belongs to the lead or supported law enforcement agency. When National Guard forces provide assistance to law enforcement agencies, the National Guard should only release information concerning assistance provided after consulting with the Joint Force Headquarters - State and the agency being supported.
 - g. Tribal Support. Consult the National Guard staff judge advocate, state attorney general, or state Bureau of Indian Affairs or similar agency for assistance.

4-4. Rules of Engagement and Rules for the Use of Force (ROE/RUF)

- a. Rules of engagement generally do not apply to National Guard forces conducting domestic law enforcement support missions. National Guard forces follow *rules for the use of force* instead.
- b. Use of force by members of the National Guard serving in state active duty status or under Title 32 will be governed by state law, usually criminal law. Rules for the use of force will be developed by a state staff judge advocate in accordance with state law. RUF will vary from state-to-state because each state has a unique constitution, laws, and legal opinions on the use of force and how it is to be used. Most rules for the use of force by Title 10 federal forces are based on DOD and Chairman, Joint Chiefs of Staff promulgations which do not apply to National Guard forces serving in a state status during a National Guard domestic law enforcement support operation.
- c. States that provide National Guard forces serving in state active duty or Title 32 status to another state normally will adopt the rules for the use of force of the supported state while deployed to the supported state. Before deployment, states involved will normally negotiate an agreement on which rules for the use of force the supporting units and forces will follow.
- d. Appearing below are subjects to consider when drafting state RUF for National Guard law enforcement, law enforcement support, or security missions conducted in state active duty or Title 32 status. They are not directive or regulatory by this National Guard Regulation. Consult the state staff judge advocate for the rules for the use of force

applicable to your specific National Guard support to civil law enforcement mission. DOD policy and guidance is summarized below to provide a basic understanding of the use of force.

- (1) The right of self defense. Military forces have the right of self defense.
- (2) The use of force must be restricted to the minimum degree consistent with mission requirements. The use of deadly force can be justified only by extreme necessity. Use criteria will be established by the state staff judge advocate.
- (3) The level of force.
- (4) Force options such as the use of face shields, vests, batons, nonlethal weapons, and arming personnel; and instructions on the use of the bayonet, weapons, and automatic firing.
- (5) Arming orders.
- (6) Apprehension and detention.
- (7) Pre-commitment briefing to all personnel covering essential information such as the mission, rules for the use of force, procedures governing the accountability and security of weapons, ammunition, and sensitive items; use of weapons and control of ammunition; special orders.

e. Failure to comply with the rules for the use of force may result in criminal prosecution.

f. Failure to provide rules for the use of force or train National Guard members in the rules for the use of force may result in civil or criminal personal liability for commanders at all echelons resulting from subordinates' unlawful acts, negligence or failure to comply with statutory guidance.

g. The force continuum. National Guard forces conducting domestic law enforcement support must use the minimum amount of force necessary to obtain compliance with lawful orders. Military personnel are always authorized and expected to use necessary force proportional to the threat, in self-defense and defense of others. In order to determine the appropriate amount of force to use, Soldiers and Airmen must be familiar with the tactics, techniques and procedures associated with the six phases of the force continuum listed below. The levels of force are designed to correspond to the actions of the subject(s) and the National Guard member's perceptions of the level of threat with which they are confronted. The use of force continuum describes the progression or de-escalation of force on the basis of the demonstrated level of compliance or resistance from a subject. The force continuum is not a ladder requiring each level to be achieved in sequence. A National Guard member providing law enforcement support may enter the force continuum at any level. The six broad levels are as follows:

(1) Level One - Officer Presence. The mere presence of uniformed law enforcement or National Guard personnel is often enough to stop or prevent most situations from escalating. At this level gestures by National Guard members should be non-threatening and professional. This level of force is always the best way to resolve any situation if possible.

(2) Level Two - Verbal Persuasion. Used in combination with a visible presence, the use of the voice can usually achieve the desired results. Whether the instruction is to, "Stop", "Don't Move", "Be quiet", "Listen to me", or, "Let me see your ID" -- voice commands in conjunction with mere presence will almost always resolve the situation. The content of the message is as important as demeanor. It is always best to start out calm, but firm and non-threatening. The choice of words and intensity can be increased as necessary, or used in short commands in more serious situations. The right combination of words in combination with presence can de-escalate a tense situation and prevent the need for a physical altercation.

(3) Level Three - Empty Hand Control (unarmed defense techniques). Certain situations will arise where words alone will not reduce the aggression. At this point, National Guard personnel will need to get involved physically. This level of control is employed minus the aid of equipment or weapons. There are two subcategories called, "soft empty hand techniques" and "hard empty hand techniques."

(a) Soft empty hand techniques. This level of minimal force involves the use of bare hands to guide, hold, and restrain -- applying pressure points, and take down techniques that have a minimal chance of injury.

(b) Hard empty hand techniques. At this level the use of force includes kicks, punches or other striking techniques to key motor points that have a moderate chance of injury.

(4) Level Four - Chemical Agents. When the suspect is violent or threatening, more extreme, but nonlethal measures must be used to bring the suspect under control, or affect an arrest. Before moving to this level of force, less physical measures should have been tried or deemed inappropriate. When used by surprise, pepper spray and tear gas are an excellent distraction, allowing National Guard personnel time to call for assistance or subdue a suspect.

(5) Level Five - Temporary Incapacitation. To use force at this level means that the situation was so extreme, violent, and immediate that it was necessary to temporarily incapacitate a suspect prior to arrival of the police. Temporary incapacitation is used to stop a suspect from injuring you or others long enough to restrain and handcuff them. Batons and Tasers may be used at this level to temporarily incapacitate a combative person.

(6) Level Six - Deadly Force. National Guard forces may use deadly force when it can be justified by extreme necessity. Deadly force is force that a person uses causing, or that a person knows or should know would create a substantial risk of causing, death or serious bodily harm. There are four requirements for the use of deadly force:

- (a) Lesser means of force have been exhausted or are unavailable.
- (b) The subject must have the ability to cause you or another serious bodily harm or death.
- (c) You or another must be in imminent danger of serious bodily harm or death.
- (d) Its use should not significantly increase the risk of death or serious bodily harm to innocent bystanders.

Chapter 5

National Guard Domestic Law Enforcement Operations

5-1. Introduction

a. Located in over 3,000 local communities throughout the nation, readily accessible, routinely exercised with local first responders, and experienced in supporting neighboring communities, the National Guard is particularly well suited for domestic law enforcement support missions.

b. The National Guard of the several states possess the ability to conduct an extensive array of missions in support of domestic law enforcement operations. Providing such support is in keeping with DOD policy to cooperate with civilian law enforcement officials to the extent practical. However, the National Guard's cooperation is tempered by the desire to maintain the historic tradition of limiting direct military involvement in civilian law enforcement activities.

c. This regulation, along with others in the NGR 500-series regulations establish the requirements and defines the standards for National Guard support to domestic law enforcement operations. This ensures consistency and commonality within the National Guard, and enables interoperability when National Guard units and forces conduct domestic law enforcement operations outside their respective state or territorial borders.

5-2. Support to Domestic Law Enforcement

a. National Guard support to domestic law enforcement operations is tailorable and permits a rapid response to local, state and federal requirements. The missions are unique, yet work harmoniously in deterring criminal activity, responding to incidents, and protecting both military and civilian entities.

b. The National Guard in a law enforcement support role conducts myriad operations that include:

- (1) Providing liaison teams with local, state, and federal law enforcement agencies
- (2) Traffic enforcement and other route control measures
- (3) Providing a visible deterrent by conducting area security, site security, and perimeter security
- (4) Access, traffic and crowd control
- (5) Convoy security
- (6) High risk personnel security

c. When approved by the Governor, National Guard units operating in a state active duty or Title 32 status may provide National Guard law enforcement support to include direct participation in civil law enforcement activities such as searches, seizures and detention.

d. Deputizing National Guard Members. Criteria for the deputizing of National Guard members operating in a state status (state active duty or Title 32) in support of domestic law enforcement are defined by the laws, policies, directives and executive orders that govern the specific state in which operations will be conducted.

e. Criminal Investigations. Upon state approval, National Guard law enforcement units can investigate offenses against National Guard forces or property. Additionally they can assist federal, state and local law enforcement agencies with criminal investigations having a military interest. Some states possess Army National Guard Criminal Investigation Command units capable of assisting in the investigation of major incidents.

5-3. Civil Disturbance Support Operations

a. The protection of life, property, and the maintenance of law and order within the territorial jurisdiction of any state is the primary responsibility of civil authorities. National Guard forces have primary responsibility for providing military assistance to state and local government agencies in civil disturbances.

(1) When domestic unrest is beyond the capability of state and local law enforcement, a Governor may direct the involvement of the National Guard in augmenting state and/or local law enforcement agencies (LEA) in

restoring public order or governmental functioning, preventing the loss of life or wanton destruction of property, or enforcing state law.

(2) National Guard forces may also be ordered into federal service to suppress insurrections, rebellions, and domestic violence.

(3) National Guard assistance is provided in support of civil authorities, not to replace civil authority.

(4) National Guard Reaction Forces may serve as the initial National Guard response for civil disturbance and crowd management operations during the first critical hours following an incident. See Chapter 7-1 for further details.

(5) The National Guard civil disturbance support mission is a joint ANG and ARNG responsibility.

b. National Guard forces may initially deploy in a state active duty status. In doing so, they are not subject to the restrictions of the Posse Comitatus Act (see Appendix D for further discussion). National Guard forces remain under the command of state NG officers. Their assigned missions are coordinated with civil authorities.

c. The Adjutants General of the several states have the authority to use the federal property issued to the National Guard of their state or territory during periods of civil disturbance declared by their Governor. The state however may be responsible for reimbursement for the use of the federal property.

d. National Guard civil disturbance preparations focus on ensuring the ability to assist in the dispersal of those obstructing the enforcement of law and public order. Civil disturbance support operations may take place under various conditions and circumstances. Therefore, considering the potential consequences, planning and preparedness (to include training exercises) are paramount to success. Complete preparedness includes obtaining, maintaining, and training on nonstandard equipment and material unique to civil disturbance operations.

e. Training.

(1) Each of the several states will develop their own civil disturbance training and assessment plan. At a minimum the plan will include training on:

(a) Apprehension, search and detention

(b) Civil disturbance formations

(c) Media relations

(d) Nonlethal capabilities sets (see paragraph 7-3 for further discussion)

(e) Riot shield and riot baton techniques

(f) Use of force

(2) Units assigned a civil disturbance mission will conduct training annually in inactive duty training status. Such training will be resourced from the units' annual allocation of inactive duty training periods. Each state will issue guidance regarding initial and annual refresher training requirements.

(3) Use Army Field Manual 3-19.15 as a guide to develop training.

(4) Only National Guard personnel who have completed civil disturbance training may directly participate in civil disturbance operations. This includes training on specialized equipment. Those who have not received civil disturbance training may only be used in a support role.

(5) All members authorized to carry firearms must have received training, achieved service qualification standards, and possess a current qualification testing on the type of firearm to be carried.

f. The apprehension of civilians during civil disturbance operations is best left to civilian law enforcement to the maximum extent possible. If the apprehension of civilian personnel is necessary, National Guard forces will do so in accordance with guidelines established by the state attorney general in accordance with state law.

g. In their support to civil disturbance operations, National Guard forces may provide supplies, services, and equipment for use in the preservation of life and property to LEAs.

h. National Guard support to LEAs should terminate as soon as possible after the situation is within the capabilities of state and local law enforcement. National Guard support termination decisions are made by the Governor or his designated representative.

5-4. Border Security Operations (BSO)

a. Thirty-nine of the fifty-four states and territories with National Guard forces possess a land and/or sea territorial border. As such, National Guard border security-related activities occur on a regular, although typically temporary basis.

b. Key to National Guard border security operations is the support provided to LEAs in the detection of transnational threats desiring entry to the homeland by land, maritime, or air conveyance along the northern, southern or maritime borders. Additional support activities include, but are not limited to: training, technical support, services, intelligence analysis, surveillance, the installation of communications towers, permanent and temporary vehicle barriers, and pedestrian fences.

c. The NGB Border Security Operations (BSO) Branch serves as the NGB's channel of communications between federal, state and local authorities participating in border security law enforcement operations; monitors domestic border-related activities; works with interagency partners on related matters; and develops future initiatives that support the National Guard and its role in border security/homeland security, and homeland defense operations.

5-5. Equipment and Training Support

a. The National Guard has specialized personnel, equipment, facilities and training that may be useful to federal, state and local LEAs. The involvement of the state judge advocate regarding all requests for National Guard support to LEAs is highly recommended. In all cases, the provision of support must be made in accordance with applicable federal or state law. When in a Title 10 status, requests for support must be consistent with the limits Congress has placed on military support to civilian LEAs such as the Posse Comitatus Act (see Appendix D).

b. Equipment support.

(1) The National Guard may loan or lease equipment (to include associated spare parts and operating supplies) to LEAs for civil law enforcement purposes. National Guard personnel may train civilian law enforcement personnel in the use of the equipment provided. National Guard personnel may accompany, and then assist in operating or maintaining the loaned military equipment. Requests for the use of personnel to operate or maintain equipment must come from the head of the law enforcement agency making the request. Depending on the circumstances, National Guard personnel operating military equipment in support of an LEA may be armed.

(2) State Adjutant Generals have authority to loan equipment with the exception of potentially lethal equipment support. The loan of weapons, combat and tactical vehicles, vessels, and aircraft require approval from the service secretaries or their designee. Requests for loan or lease of National Guard equipment requiring service secretary approval will be reviewed by the National Guard Bureau.

(3) Loans and leases of equipment are governed for the ARNG by AR 700-131 and for the ANG by AFI 23-119.

c. Use of Equipment During State Active Duty Missions. State Adjutants General have authority to use federal property issued to the National Guard of their state during periods of civil disturbance and other emergency conditions declared by the governor. If required, states may coordinate directly with other states for temporary loan of federal property required for a particular emergency response. United States Property and Fiscal Officers (USPFO) are responsible for making coordination including reimbursements and reporting.

d. Reimbursement for Equipment Loaned for State Active Duty Missions. The state is liable for reimbursement (or replenishment in kind) to the Federal Government through the USPFO when federal property is used by National Guard personnel, serving in state active duty status, when ordered by the governor to respond to emergencies related to civil disturbances, natural disasters, or other incidents. Reimbursement or replenishment requirements include:

(1) Repair parts expended in the objective area, other than for fair wear and tear.

(2) Petroleum, oils, and lubricants expended for direct mission accomplishment.

(3) Incremental costs attributed to direct mission support. Incremental costs are those costs above expenses normally accrued during scheduled training periods.

(4) Equipment reimbursement costs are specified in AR 700-131 for the use of Army National Guard equipment and in AFI 23-119 for use of Air National Guard equipment.

e. Reimbursement for the Use of Aircraft.

(1) NGB Pamphlet 95-5 outlines policies and procedures for the use and reimbursement of Army National Guard aircraft during emergency conditions for state active duty missions. Normally, reimbursement for flying hours is not required if the state active duty mission meets specified criteria.

(2) Reimbursement policies for Air National Guard aircraft are found in the Air Force Manual 23-110 series.

f. Training support. National Guard may provide training to federal, state, and local civilian LEAs. Such support may include training in the operation and maintenance of equipment to include National Guard loaned military equipment. Basic military training such as marksmanship, combat lifesaver, and mission planning are acceptable. However, training which focuses on the tactics, techniques, and procedures required to apprehend, arrest, detain, search for, or seize a criminal suspect when the potential for a violent confrontation exists (i.e. special reaction team training) is limited to being taught at the U.S. Army Military Police School or on exception by special operations forces personnel when approved by the Commander, U.S. Special Operations Command.

g. Emergency Support Function (ESF) #13 – Public Safety and Security. Occasionally, National Guard forces may be called upon to provide interstate mutual aid under the provisions of the National Response Framework. Such support can include requests for National Guard equipment. See paragraphs 8-6 for additional information regarding the Emergency Management Assistance Compact (EMAC) and 8-7 regarding ESF #13.

5-6. Use of Non-Standard Weapons and Ammunition

a. National Guard personnel providing law enforcement support will not possess or use non-issued or personally owned firearms or ammunition while in a Title 32 or Title 10 status. The only weapons authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status are federally owned military weapons listed on the unit's property books. The only ammunition authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status is ammunition issued through the military supply system.

b. National Guard personnel are not authorized to train with state-owned firearms during monthly unit training assemblies or during annual training periods.

c. National Guard personnel will not accept offers of weapons or ammunition from law enforcement agencies (LEA) except for use on LEA operated ranges for training purposes only.

Chapter 6

National Guard Domestic Mission Assurance Operations

6-1. Critical Infrastructure Protection

The National Guard Critical Infrastructure Program is a mission assurance program complementing the Defense Critical Infrastructure Program (DCIP) (described in DOD Directive 3020.40 and the *National Infrastructure Protection Plan* (NIPP)).

a. National Guard tasks in support of the DCIP.

(1) The NGB coordinates with the Assistance Secretary of Defense for Homeland Defense and America's Security Affairs and the Chairman of the Joint Chiefs of Staff for the development of policy and the identification, prioritization and protection of defense critical infrastructure within the United States and its territories.

(2) The National Guard Critical Infrastructure Program concentrates on domestic infrastructure essential to planning, mobilizing, deploying, executing, and sustaining U.S. military operations. Coordination on remediation and mitigation is accomplished with state and local governments, federal agencies, and the private sector as appropriate.

(3) The National Guard currently provides National Guard teams to conduct vulnerability assessments of Defense Industrial Base sites, in conjunction with Defense Contract Management Agency (DCMA). These sites have been deemed critical to the DOD as part of the Defense Industrial Base Sector.

(a) Vulnerabilities found in critical infrastructure are identified for remediation or mitigation based on risk management decisions made by responsible authorities.

(b) The identification, prioritization, assessment, and assurance of critical infrastructure is managed as a comprehensive program that includes the development of adaptive plans and procedures to mitigate risk, restore capability in the event of loss or degradation, support incident management, and protect critical infrastructure-related sensitive information.

(c) The National Guard Critical Infrastructure Program complements other state, NGB, and DOD programs and efforts, such as: force protection; antiterrorism; information assurance; continuity of operations; chemical, biological, radiological, nuclear, and high-explosive defense; readiness; and installation preparedness – all of which contribute to mission assurance.

(d) National Guard Critical Infrastructure Program activities related to the defense industrial base shall be consistent with and executed by those authorities responsible for the National Industrial Security Program (NISP). National Guard CIP efforts shall utilize the NISP (DOD Directive 5220.22) to the maximum extent practical.

b. National Guard tasks in support of the NIPP.

(1) The DOD coordinates through the NGB with the State Governors to provide DHS three-person National Guard teams to perform, on behalf of DHS, vulnerability assessments of DHS designated assets

(2) The DOD Executive Agent, through NGB, provides the oversight necessary to coordinate the planning (including any adjustments to team size and composition); deployment; execution; and post-deployment of the vulnerability assessments by the National Guard teams.

(3) The use of National Guard personnel for the performance of vulnerability assessments on behalf of DHS is:

(a) Provided on an as-requested and as-available basis;

(b) Facilitated and coordinated by the DOD Executive Agent through the National Guard Bureau;

(c) Performed with the consent of the relevant Governors of the states with authority over those National Guard personnel;

(d) Provided on a reimbursable basis;

- (e) Provided typically, but not exclusively, under the authority of section 502(f) of title 32, US Code; and
- (f) Provided on a non-interference basis with military training and preparedness.

c. State Critical Infrastructure Protection Programs.

(1) The National Infrastructure Protection Plan (NIPP) and supporting sector-specific plans provide a coordinated approach for the protection of critical infrastructure and key resources (CI/KR) and identify the authorities, roles and responsibilities for federal, state, local, and tribal governments. States and territories are responsible for establishing partnerships, facilitating coordinated information sharing, and enabling planning and preparedness for CI/KR protection within their jurisdictions. They serve as crucial coordination hubs, bringing together prevention, protection, response, and recovery authorities; capabilities; and resources among local jurisdictions, across sectors, and between regional entities. States and territories also act as conduits for requests for Federal assistance when the threat or incident situation exceeds the capabilities of public and private sector partners at lower jurisdictional levels.

(2) As directed by the NIPP, state and territorial governments shall develop and implement state or territory-wide CI/KR protection programs that reflect the full range of NIPP-related activities. National Guard requirements related to CI/KR protection programs are directed by individual State and territorial statutes and plans. State missions that may be performed by National Guard units and personnel include: vulnerability assessment and analysis and the development of remediation plans (to include deterrence operations); planning related to CI/KR protection; response to CI/KR attacks; supporting the reconstitution of disabled CI/KR capabilities; and information sharing.

6-2. Joint Antiterrorism/Force Protection Program

a. The threat of terrorism will remain constant and pose special challenges to a community-based organization such as the National Guard. Each of the several states has unique circumstances given the varied situations and dispositions of their National Guard assets. The specific situation in each state necessitates the close coordination of National Guard antiterrorism (AT) efforts in order to provide the most comprehensive protection possible. To this end, the NGB developed the NGB Antiterrorism Strategic Plan that provides guidelines for the several states to establish and monitor National Guard AT programs. The NGB Antiterrorism Strategic Plan also provides a basis for AT program synergy between the ARNG, the ANG, and among the several states in order to better coordinate AT policy and efforts.

b. The NGB Antiterrorism Strategic Plan calls for each of the several states to develop and implement a fully integrated AT plan. The NGB Antiterrorism Strategic Plan serves as a guide to facilitate the preparation of a state AT plan by providing a set of goals, objectives and progress milestones. The state AT plan should synchronize Army and Air National Guard AT efforts to deter, detect, prevent, defend against, respond to and mitigate terrorist attacks against National Guard installations, infrastructure, key assets, mission essential information, and military and civilian personnel and their families. Actions specified in the AT plan must be within the scope of state and federal law.

c. State antiterrorism plans should strive to achieve these six strategic goals:

(1) Management and Information. Implement effective AT risk management processes and ensure the timely and pertinent dissemination of AT threat information and intelligence.

(2) Plans. Develop and execute proactive, relevant, and viable AT plans and AT program management practices.

(3) Training. Conduct effective AT training and execute realistic AT exercises.

(4) Implementation. Optimize the planning, programming, and execution of resources in support of AT programs.

(5) Review. Execute holistic, comprehensive reviews of AT programs to ensure compliance with DOD AT program standards.

(6) Coordination. Develop and sustain relationships with federal, state, and local officials to effectively coordinate the JFHQ-State AT program.

d. Each state should designate an individual as the Joint Staff Antiterrorism Officer.

(1) Report the name and contact information for the State Antiterrorism Officer via email to: nggbj34pm@ng.army.mil.

(2) The designated individual must be Level II AT certified.

(3) The State Antiterrorism Officer should develop and manage a detailed AT action plan designed to ensure the achievement of established AT goals and performance objectives. The NGB Antiterrorism Strategic Plan provides recommended activities to include in a state's detailed AT action plan.

e. Annually, each of the several states should complete the JFHQ-State AT Program Report and provide a copy of the report to the NGB J-34, Antiterrorism Force Protection (AT/FP) Branch (nggbj34pm@ng.army.mil) no later than August 15th of each year. The NGB Antiterrorism Strategic Plan contains the format for the report.

f. The NGB Joint Staff coordinates policy and program guidance and develops strategic direction that complies with DOD-wide AT Program standards at the JFHQ-State level. To assist in this effort there are three NGB-level AT forums that monitor AT and AT-related force protection actions within the National Guard:

(1) NGB's Antiterrorism Executive Committee (ATEC).

(a) The ATEC provides information to the NGB senior leadership on all overarching National Guard AT matters. It conducts analysis and provides recommendations for AT programmatic issues affecting the National Guard. The ATEC develops, refines and recommends NGB AT program guidance, policy and standards, and reports on strategic vulnerabilities. The ATEC also recommends ways to mitigate or eliminate terrorism related vulnerabilities.

(b) The ATEC meets semi annually at the NGB, and is co-chaired by the NGB J-34 and NGB Deputy J-2. Video teleconference is the preferred means of attendance for all members not within commuting distance to the NGB. In addition to the co-chairs, the membership shall include the ARNG AT/FP officer, the ANG AT/FP officer, as well as state and territorial members identified in the ATEC charter. The NGB J-34 AT/FP branch will organize and host the ATEC meetings.

(2) NGB Antiterrorism Working Group (ATWG).

(a) The ATWG identifies and takes action on emerging National Guard AT program issues; examines the synergies that can be achieved between the National Guard component service programs; and recommends policy and guidance changes to the National Guard AT program.

(b) The ATWG is co-chaired by the NGB J-34 AT/FP officer, an NGB J-2 representative, the ARNG AT/FP officer, and the ANG AT/FP officer. A representative from the NGB J-34 critical infrastructure protection branch participates. Additionally, the ATWG Charter specifies work group membership from designated states and territories. Other NGB Joint Staff or state work group representation will be established based on the nature of the matters before the committee. The ATWG shall meet at least semi-annually in advance of the ATEC. The NGB J-34 AT/FP Branch will organize and host ATEC meetings.

(3) NGB Threat Working Group (TWG).

(a) The NGB TWG provides an organized forum for comprehensive and coordinated evaluation and assessment of National Guard-nexus intelligence and threat information in order to support the National Guard Bureau's planning and decision-making processes. The TWG conducts shared discussion of existing threats, identification of trends and potential future concerns, facilitates collaboration between force protection stakeholders, and develops for the National Guard Bureau leadership threat assessments, recommendations, and reports when appropriate.

(b) The TWG is co-chaired by the NGB LETIC branch chief and the NGB J-2 current intelligence division chief. The TWG includes the NGB J-34 antiterrorism officer, the ARNG antiterrorism program manager, the ANG antiterrorism officer and security forces operations officer, J-357 chemical, biological, radiological, nuclear and high-yield explosives (CBRNE) officer, J-335 special events planning officer, staff judge advocate officer, border security operations branch border analyst, counterdrug analyst, NGB directorate of management antiterrorism officer, joint surgeon force health protection officer, and the provost marshals, J-2 directors, and antiterrorism officers of the several states. Secure video teleconference is the preferred means of attendance for the TWG. The TWG shall meet quarterly or more based upon threat activity.

g. The ARNG and the ANG remain the principal points of contact for the programming, budgeting and execution of the service specific force protection requirements of the National Guard AT program.

6-3. Law Enforcement Information Sharing

a. Law enforcement information sharing is the identification, integration, analysis, and dissemination of threat information collected from a wide range of sources. It includes not only an analysis of criminal threats, but also the implications against existing or potential National Guard operations associated with the threat environment. Law enforcement information sharing supports, enhances, and contributes to effective law enforcement and security asset utilization by identifying force protection threats and trends thus enabling the development and implementation of countermeasures designed to thwart criminal activity and safeguard National Guard personnel, facilities, information, operations, or material.

b. Law enforcement information sharing is not an intelligence activity and not governed by intelligence oversight, but is conducted by law enforcement personnel on the Provost Marshal staff and subject to specific oversight and regulation. Authorities for law enforcement information sharing are derived from law enforcement, antiterrorism and

force protection responsibilities described in DOD, and service, directives and regulations. There are restrictions and limitations on the collection of information for law enforcement purposes as guided by DODD 5200.27 (see paragraph 4-3d of this regulation for a discussion of the legal considerations).

c. Law enforcement information sharing is also guided by DODD 5400.11. In particular, the privacy of an individual is a personal and fundamental right that shall be respected and protected. Individuals performing law enforcement information sharing have an affirmative responsibility to protect an individual's privacy when collecting, maintaining, using, or disseminating personal information about an individual. The need to collect, maintain, use, or disseminate personal information about individuals for law enforcement information purposes shall be balanced against the right of the individual to be protected against unwarranted invasions of their privacy. The legal rights of individuals, are guaranteed by federal laws, regulations, and policies, and must be protected when collecting, maintaining, using, or disseminating personal information about individuals. Records maintained must be pertinent to and within the scope of an authorized law enforcement activity.

d. Due to the various federal and state laws, executive orders, and DOD and service directives and regulations governing the collection of intelligence and law enforcement information, law enforcement information sharing should remain separate and distinct from intelligence operations at all times to avoid intelligence oversight conflict, or the appearance or perception thereof. This includes not permitting law enforcement information cells to be a part of, or report to, state J-2 (intelligence) organizations. The reason is that any law enforcement cell functioning with, as part of, or on behalf of an intelligence capability (person, equipment, process, or system) becomes a de facto intelligence capability and subject to the rules applicable to intelligence collection.

e. The key to successful law enforcement information sharing is not only the identification and analysis of criminal information, but the subsequent development and reporting of actionable, timely and useful information to the intended recipients. The mere redistribution of existing information is nonproductive.

f. The NGB Law Enforcement Threat Information Cell (LETIC) provides information and recommendations to National Guard leadership to assist decision-making pertaining to: force protection; antiterrorism; security; critical infrastructure protection; law enforcement activities; and operations. This information consists of identification, analysis, and reporting of law enforcement (domestic and criminal) threat information that is significant and relevant to National Guard and DOD operations, personnel, infrastructure, and current or future missions. LETIC activities are conducted in strict compliance with DOD antiterrorism, law enforcement, and sensitive information handling requirements. Lastly, the LETIC conducts liaison and information-sharing with USNORTHCOM J-34 LETIC, service component counterpart offices, state and local fusion centers, and other military and civil law enforcement elements as appropriate to fulfill its' mission requirements in accordance with federal, state and local laws.

Chapter 7

National Guard Domestic Law Enforcement and Mission Assurance Capabilities

7-1. State National Guard Reaction Force (NGRF)

a. Overview. Formed from current units and personnel resources, the NGRFs are designed to be rapidly deployable battalion-sized "all-hazards" temporary task forces. They are capable of supporting law enforcement by providing site security, presence patrols, show of force, establish roadblocks and/or checkpoints, control civil disturbances, provide force protection and security for Weapons of Mass Destruction-Civil Support Team (WMD-CST) or Chemical, Biological, Radiological, Nuclear and high-yield Explosives (CBRNE) enhanced response force package (CERFP) operations, or respond to and assist in protecting selected assets. They perform their mission under the command and control of the Governor of their home state when operating in a state active duty or Title 32 status. The NGRF is an extremely flexible force capable of providing an initial operating force during the first critical hours following an incident. With the exception of nonlethal capability sets, NGRF capabilities are supported by current unit equipment. The NGB NGRF Implementation Plan provides detailed guidance for a state to use when organizing, training and equipping their NGRF.

b. Training. Each of the several states will develop their own NGRF training and assessment plan. Training will focus on the NGRF Mission Essential Task List (assemble forces; deploy; communicate; security; and support to civil authorities). Training to the tasks and standards outlined in the NGB NGRF Implementation Plan is the basis for ensuring success in the myriad of missions that an NGRF may be called upon to perform.

c. Readiness.

(1) Each of the several states should have an NGRF capable of delivering, at the request of the Governor or other competent authority, a quick reaction force unit of 75-125 personnel within 8 hours, and a follow-on force of 375 personnel within 24-36 hours.

(2) Each NGRF must as a minimum be capable of successfully executing five mission essential tasks: assemble forces; deploy; communicate; security; and support to civil authorities.

(3) NGRFs must have the capability to be logistically self-sustaining for up to 72 hours.

(4) NGRF Readiness Report. Each of the several states will provide a NGRF Readiness Report on the status of their NGRF tier, personnel, training, equipment, and overall readiness. Complete the report on the first day of each quarter or when there is a status change, whichever comes first. The report is located on Guard Knowledge Online-Secure at the link for "NGRF Readiness Report".

d. Certification. Adjutants General will validate in writing their NGRF annually or within three months after a new unit assumes the NGRF mission. Validation formally indicates the unit(s) or individuals that comprise an NGRF are mission capable. A copy of the validation should be sent to the NGB J-34.

e. Standardization and Evaluation. The following minimum standards apply to a state National Guard Reaction Force:

(1) State NGRF Concept of Operations (CONOPS). A state developed document which provides an overview of how the state NGRF will be employed to accomplish the mission essential tasks of assemble forces, deploy, communicate, security, and support to civil authorities.

(2) State NGRF Training Plan. A state developed document that outlines how the state NGRF will be trained to accomplish the mission essential tasks of assemble forces, deploy, communicate, security, and support to civil authorities.

(3) State Nonlethal Weapon Plan (if applicable). A state developed document that includes a by-name roster of service members who have successfully completed the Inter-Service Nonlethal Individual Weapons Instructors Course and serve as nonlethal trainers; an employment plan addressing the incorporation of nonlethal weapons in to the state's RUF; and a nonlethal weapon training plan either incorporated into the NGRF training plan or a stand-alone state-specific nonlethal weapon training plan (see paragraph 7-3).

(4) State Rules for the Use of Force. See paragraph 4-4.

(5) State NGRF Capstone Exercise Overview Memorandum. A brief two to three page memorandum outlining the highlights of the state's NGRF exercise and explaining how the minimum standards from the CONOPS, training plan, nonlethal weapons plan (as applicable) and RUF were incorporated.

(6) TAG Signed NGRF Validation Memorandum. A memorandum signed by the TAG stating the unit(s) or individuals that comprise the NGRF have met their State's NGRF validation requirements and are deemed mission capable.

7-2. National Guard Joint Force Headquarters-State Provost Marshal-J-34 (JFHQ-State-PM)

a. Overview.

(1) Each of the several states' Office of the Provost Marshal and J-34 has as a primary mission to provide guidance, assistance and coordination to the state's senior leadership and units on matters related to law enforcement support, and antiterrorism and force protections activities. State PM-J-34s support state JTF commanders and all units deployed within the state, and act as an information channel to the National Guard Bureau. Efforts include assisting in the planning, training, exercise and response of military police, security forces, and National Guard Reaction Forces for homeland defense and support to civil authorities. The office also provides support to criminal information analysis and investigations, assists in the interagency coordination for strategic and operational law enforcement support planning, serves as the senior military law enforcement representative on scene, and as a liaison between military and state, local and federal law enforcement agencies. One area of significant support involves the coordination of security requirements for national special security events (NSSE).

(2) The PM-J-34 organizational structure typically includes Critical Infrastructure Protection, Mission Assurance, Law Enforcement Operational Support, Non-Lethal Capabilities, and Law Enforcement Information Branches, and support of 24-hour operations of the state Joint Operations Center.

b. The NGB Provost Marshal can assist each of the several states with the training, readiness and evaluation of state provost marshal programs.

7-3. Nonlethal Capabilities Program

a. Overview.

(1) The National Guard has established nonlethal capabilities to assist civilian authorities with Homeland Defense or Homeland Security missions. Each state's Adjutant General, in conjunction with the state's Governor and Attorney General, must ultimately determine if state National Guard Forces will utilize nonlethal capabilities during domestic operations.

(2) Nonlethal capabilities are employed with the intent to compel or deter adversaries while minimizing fatalities and damage to equipment or facilities. Nonlethal capabilities provide an escalation of force option between the mere presence of National Guard personnel at an incident and the use of lethal force.

(3) Nonlethal weapons (NLW) are explicitly designed and primarily employed to temporarily incapacitate personnel or materiel, while minimizing fatalities, preventing permanent injury to personnel, and limiting undesired damage to property and the environment. NLW employ means other than gross physical destruction to prevent the target from functioning. NLW have relatively reversible effects on personnel or material.

(4) NLW enhance the capability of National Guard personnel to: discourage, delay, or prevent civil disturbance; limit escalation of force during civil disturbance operations; take action in situations where the use of lethal force is either not the preferred option or is not permitted under the established rules for the use of force (RUF); and better protect National Guard forces.

(5) The availability of nonlethal weapons does not limit a commander's authority and obligation to use all necessary means available and to take appropriate action in self-defense.

(6) NLW may be used in conjunction with lethal weapon systems to enhance the latter's effectiveness and efficiency in military operations.

(7) The NGB-PM/J-34 Nonlethal Capabilities Branch serves as the central focal point for interagency coordination for the Army National Guard and Air National Guard with other DOD entities for all non-lethal issues that pertain to the National Guard. It has primary responsibility in coordinating, synchronizing, and identifying nonlethal capabilities for the National Guard. The branch coordinates the development of concepts of operations for nonlethal capabilities, and identifies new nonlethal technologies for possible incorporation and use by National Guard personnel.

b. Training.

(1) The Adjutants General are responsible for authorizing nonlethal capabilities training in accordance with applicable state laws. Training shall be conducted only on those nonlethal capabilities that are considered legal under applicable state laws.

(2) Nonlethal capabilities and weapons can cause serious injury or death if they are not employed properly. Therefore, it is imperative that all training be conducted by personnel who are properly trained to provide nonlethal instruction. As with any weapons qualification, training is a critical to the proper employment and use of nonlethal weapons and capabilities. Unit training should follow the following sequence: instructors complete the Interservice Nonlethal Individual Weapons Instructors Course (INIWIC), unit leaders, unit members, and then unit collective training (including exercises). Subsequent annual refresher training is required.

(3) Each of the several states should develop nonlethal capability training plans. Training requirements for the nonlethal capability sets (NLCS) of equipment (legacy sets, riot control modules, and riot control gear and equipment) are outlined in FM 3-22.40. Additional training support information may be found in TC 3-19.5.

(4) States will ensure that all nonlethal training is conducted by INIWIC certified nonlethal instructors. INIWIC instructors will develop training courses in accordance with the programs of instruction taught at INIWIC. Instructors will ensure that the training courses are tailored to incorporate their state's statutory laws concerning the use of any of the nonlethal capabilities within the NGB NLCS. Additionally, INIWIC instructors will ensure, in conjunction with their staff judge advocate, that RUF and instruction on escalation of force is also provided during the course.

(5) The following are recommended standards for training of nonlethal capabilities:

(a) Riot Control Equipment. Proper techniques for the utilization of riot control equipment (face shields, body shields, shin guards, and batons) and riot control formations can be found in FM 3.22.40 and FM 3-19.15. Recommend using the INIWIC instructors for this training. Annual refresher training is required.

(b) OC Spray. In accordance with state law, OC Spray training will be provided to designated National Guard personnel. All identified users of OC Spray are required to attend a formal block of instruction in a classroom environment. Upon completion of the classroom portion of the training, all users are required to pass a written examination prior to participating in the practical portion of the instruction. For the practical portion of instruction, personnel will utilize the inert training canisters to learn proper techniques for employing OC Spray. This practical portion will culminate in each user properly performing a series of riot control baton techniques and subject restraining tactics immediately after being exposed to a short burst of OC spray.

(c) Taser. In accordance with state law, taser training will be provided annually. All identified users of tasers will attend an annual formal block of instruction in a classroom environment. Upon completion of the classroom portion of the training, all users are required to pass a written examination prior to participating in the practical portion of the instruction. During the practical portion of the taser instruction, identified users of the taser should fire a minimum of two taser cartridges per year for familiarization purposes. One cartridge shall be a training

cartridge, and one shall be a “live” 25-foot XP Taser cartridge. Both taser cartridges should be fired at “taser” targets.

c. Readiness.

(1) Proper storage and security of all nonlethal capability equipment is a priority. Some of these items can be extremely dangerous if mishandled by untrained personnel.

(2) States should review their RUFs to ensure that they address inclusion of nonlethal capabilities. Recommend that RUF development be a team effort by the state’s National Guard Judge Advocate General and state’s attorney general, with concurrence from the state Governor and Adjutant General.

d. Certification.

(1) INIWIC is the only formal DOD nonlethal weapons “train-the-trainer” course. Upon successful completion of the course, the individual is qualified to train others in the use and employment of nonlethal weapons and capabilities. However, the INIWIC graduate is not qualified to train others to be nonlethal instructors. ARNG soldiers who graduate from INIWIC receive an Additional Skill Identifier and ARNG personnel receive a Special Experience Identifier upon meeting all requirements. National Guard personnel who graduate from the INIWIC course are prepared to conduct DOD standard non-lethal training at the unit level.

(2) Each of the several states will develop their unit certification program using this regulation and the NGB Nonlethal Capabilities Concept of Operations as guides.

e. Consequence Management Support Center (CoMSUPCEN). The CoMSUPCEN is the logistical hub for the receipt, storage and distribution of nonlethal equipment. Procedures for nonlethal equipment requisition and replacement are contained in Appendix F.

Chapter 8 Planning

8-1. Planning Considerations

a. The homeland operational environment drives the need for achieving unity of effort between state and Federal Governments during the course of domestic law enforcement support and mission assurance operations. This operational environment requires comprehensive planning. National Guard domestic law enforcement support and mission assurance operations vary in scale, scope, and complexity and are frequently conducted in support of local, tribal, state and federal authorities. Expect that some National Guard forces may respond to an emergency under state active duty authority, other National Guard forces to respond under Title 32 provisions, while others are called-up under Title 10 authority.

b. Planners should consult staff judge advocates throughout the planning process as there are restrictions on the use of National Guard personnel from one state to perform a law enforcement role in another state.

c. State National Guard plans should address continuity of operations, command and control, survivability, equipment evacuation, alert procedures, communications, and requests for support. Rules for the use of force should be specified in advance of domestic law enforcement operations. Plans should contain provisions for the potential transition to federal status. Plans should be exercised on a regular basis.

d. In January 2009, the Secretary of Defense directed all service secretaries, the Chairman of the Joint Chiefs of Staff, commanders of the combatant commands, and other DOD component heads including the Chief, National Guard Bureau (CNGB) to improve coordination and unity of effort with state responders during emergency response operations. He directed the CNGB, the Joint Chiefs of Staff and other DOD policy makers to develop options and protocols that allow supporting federal forces to assist state emergency response personnel in a coordinated response to domestic catastrophes and emergencies. His emphasis is on unity of effort. He concluded that deliberate contingency planning is the principal means by which to synchronize and coordinate activities of state and federal forces in response to domestic emergencies. The Secretary of Defense directs DOD support plans consider command and control options that will emphasize unity of effort, and plans will authorize direct liaison for consulting and coordinating between federal military forces and state authorities, National Guard units and personnel operating in Title 32 or in state active duty status, or federal civilian authorities at the tactical-level of execution.

(1) During National Guard domestic law enforcement support operations, be prepared to exchange liaison officers and conduct direct liaison with federal military forces and others.

(2) Consider credentialing liaison officers in a similar manner as required by the Secretary of Defense. Combatant commanders must provide the following guidance in execute orders or other directive operational documents:

- (a) The state or federal authority to which direct liaison applies.
- (b) The support authorized to be performed using direct liaison. (Title 18 USC section 1385, the Posse Comitatus Act, places legal limits on federal military liaison officer (see paragraph 3-3 and Appendix D)).
- (c) The area of operations wherein direct liaison is permitted.
- (d) The duration during which direct liaison is permitted.
- (e) Procedures for resolving conflicts between state guidance and DOD or other federal agency guidance.

8-2. Planning Requirements

- a. National Guard Regulation 500-1 directs the development of state contingency plans that address threats and potential disasters. When applicable, these plans should contain provisions for law enforcement and mission assurance support conducted before, during, and after those emergency situations.
- b. The CNGB's Antiterrorism Strategic Plan directs the development and implementation of a fully integrated state antiterrorism plan.

8-3. Law Enforcement Support Planning Priorities

- a. It is essential to coordinate with the supported law enforcement agencies and understand their overall concept of the law enforcement operation. Doing so will help determine needed National Guard capabilities and operational requirements. National Guard planners should match resources against LEA capability requirements. National Guard planners should allocate state National Guard resources by assigning units and other resources to accomplish the priority needs.
- b. Typical state or municipal top priorities for domestic law enforcement support operations include:
 - (1) Saving lives and protecting the health and safety of the public, responders, and recovery workers.
 - (2) Preventing an imminent incident, including acts of terrorism, from occurring.
 - (3) Protecting key resources.
 - (4) Protecting property.
 - (5) Conducting law enforcement operations to resolve the incident, apprehend perpetrators, and collect and preserve evidence for prosecution or attribution.
- c. Rules for the use of force should be specified in planning documents and execution orders related to conducting National Guard law enforcement support operations. See paragraph 4-4 for details related to the rules for the use of force.

8-4. The National Response Framework (NRF)

The National Response Framework is a guide to how the Nation conducts all-hazards response. It is built upon scalable, flexible, and adaptable coordinating structures to align key roles and responsibilities across the Nation, linking all levels of government, nongovernmental organizations, and the private sector. It is intended to capture specific authorities and best practices for managing incidents that range from the serious but purely local, to large-scale terrorist attacks or catastrophic natural disasters. The NRF identifies the key response principles, as well as the roles and structures that organize national response. It describes how communities, states, the Federal Government and private-sector and nongovernmental partners apply these principles for a coordinated, effective national response. In addition, it describes special circumstances where the Federal Government exercises a larger role, including incidents where federal interests are involved and catastrophic incidents where a state would require significant support. It lays the groundwork for first responders, decision-makers and supporting entities to provide a unified national response. The National Guard and the National Guard Bureau shall consider the NRF in the planning and conduct of National Guard law enforcement support and mission assurance operations.

- a. The National Response Framework identifies preparation, response, and recovery as the three stages of incident management operations. Adapted for National Guard domestic law enforcement support operations, the three stages of incident management apply to law enforcement support planners.
 - (1) Preparation. The preparation stage facilitates a rapid response by National Guard forces providing domestic law enforcement support. Similar to the prevention stage, share unclassified law enforcement sensitive information with states and localities via teleconferences and liaison officers. Provost marshal and military police should conduct area assessments and conduct planning and coordination with state and local law enforcement officials, if the situation permits. Consider tabletop or sand box exercises with National Guard commanders and staffs, plus state and local counterparts. Assess availability of riot control and other operational equipment, if appropriate. Place selected personnel and units on alert. Validate rules governing the use of force. Obtain staff judge advocate approval of the response plan and execution order. Conduct mission related training as required.

Conducting threat assessments during this time is not encouraged, unless requested by state or local officials, and the request is within the scope of the law.

(2) Response. National Guard domestic law enforcement support operations focus on support to state or local law enforcement agencies specified in the plan or execution order, and those tasks subsequently coordinated with and approved by the state provost marshal. National Guard forces normally redeploy as operations transition from the response to the recovery stage. Transition planning is based on the anticipated or actual completion of law enforcement support tasks, or the unfinished mission assignments transfer to other state or federal agencies.

(3) Recovery. The extent to which National Guard domestic law enforcement support operations remain involved in the recovery phase requires careful consideration by National Guard leaders. Recovery phase operations begin the process of returning the community infrastructure as well as municipal and commercial services to a status that satisfies the needs of the population. National Guard law enforcement support may still be required during this final phase of the overall mission. As with Hurricane Katrina, neighborhood security may still have to be maintained and the need for traffic control and law enforcement may exist. Like any other law enforcement mission, National Guard forces must account for personnel, equipment, and sensitive items. Maintenance must be performed and after action and lessons learned reports prepared. Operational costs must be captured, and EMAC support costs must be submitted. Law enforcement contingency plans should be revised based on lessons learned.

b. The NRF base document is supplemented by fifteen Emergency Support Function and eight Support Annexes. They are individual documents designed to provide concept of operations, procedures and structures for achieving response directives for all partners in fulfilling their roles under the NRF.

8-5. The National Incident Management System (NIMS)

a. While most incidents are generally handled on a daily basis by a single jurisdiction at the local level, there are important instances in which successful domestic incident management operations depends on the involvement of multiple jurisdictions and responder disciplines. These instances require effective and efficient coordination across the spectrum of all organizations and activities. NIMS establishes standardized incident management processes, protocols, and procedures for use by local, state, tribal, and federal responders to coordinate and conduct response actions. National standardized procedures establish a common language and a common way of doing things.

b. Key features within the National Incident Management System that provide interoperability and compatibility include:

(1) Incident Command System (ICS). NIMS establishes ICS as a standard incident management organization containing five functional areas for managing all major incidents -- command, operations, planning, logistics, and finance and administration. To ensure further coordination, and during incidents involving multiple jurisdictions or agencies, the principle of unified command are universally incorporated into NIMS. This unified command not only coordinates the efforts of many jurisdictions, but also provides for and ensure joint decisions on objectives, strategies, plans, priorities, and public communications.

(2) Communications and Information Management. Standardized communications during an incident are essential and NIMS prescribes interoperable communications systems for both incident and information management. Responders and managers across all agencies and jurisdictions must have a common operating picture to plan and conduct an efficient and effective incident response.

c. The National Incident Management System promotes preparedness by incorporating a range of measures, actions, and processes accomplished before an incident happens. NIMS preparedness measures include planning, training, exercises, qualification and certification, equipment acquisition and certification, and publication management. All of these serve to ensure that pre-incident actions are standardized and consistent with mutually-agreed doctrine.

d. The NIMS Integration Center or NIC ensures that NIMS remains an accurate and effective management tool. Besides capturing and evaluating lessons learned, the NIC provides strategic direction and oversight of the National Incident Management System itself. It facilitates and develops national standards for NIMS education and training, first responder communications and equipment, typing of resources, qualification and credentialing of incident management and responder personnel, and standardization of equipment maintenance and resources. The NIC will continue to collaborate with local, state, tribal, federal, and private stakeholders to assess prospective changes and ensure continuity and accuracy to meet the evolving needs.

e. The National Guard and the National Guard Bureau leaders must be conversant with NIMS terms and doctrine in order to easily coalesce into civilian ICS response and shall operate consistent with NIMS as implemented within each state unless doing so would lead to compromising operational missions or disrupting military command authority.

8-6. The Emergency Management Assistance Compact (EMAC)

a. The Emergency Management Assistance Compact or EMAC (Public Law 104-321) is a national mutual assistance agreement that makes available almost any capability that one state has that can be shared with another during times of disaster or emergency. This includes National Guard forces supporting law enforcement agencies. EMAC provides the structure and mechanism allowing the rapid movement of equipment, supplies, and personnel across state lines to assist another state in the event of an emergency or disaster. State governments initiate EMACs.

b. For the National Guard and civilian responders, the EMAC resolves many of the previous problems related to mechanical and professional licensing, legal liability, and worker's compensation insurance. Under EMAC, licenses, certifications, and permits recognized by the "assisting state" are recognized by the "receiving state", subject to limitations and conditions prescribed by the Governor's executive order or emergency declaration.

c. EMAC establishes a firm legal foundation. Once the conditions for providing assistance to a requesting state have been set, the terms constitute a legally binding contractual agreement that make supported states responsible for reimbursement. Responding personnel are financially and legally protected under worker's compensation and liability provisions.

d. Under certain limitations and conditions, EMAC permits National Guard forces to support law enforcement agencies in another state through the use of supplemental agreements.

(1) Missions to support law enforcement operations that do not involve exercising arrest authority or enforcing civil laws within another state are within the scope of EMAC and do not require supplemental agreements.

(2) EMAC provisions do not preclude any state from entering into supplementary agreements with another state. These supplementary agreements may be prepared in advance and include provisions for the granting of arrest and enforcement of civil law authority.

(3) Supporting emergency forces are not permitted arrest authority unless specifically authorized by the supported state's Governor.

(4) Supporting National Guard forces may not enforce the civil laws of another state. In particular, it is outside the scope of EMAC to authorize or permit the use of military force by the National Guard of any state outside of that state in any emergency for which the President is authorized by law to call the militia into federal service. However, a supported state's Governor may authorize National Guard members of a supporting state to enforce the civil laws of a supported state.

(5) In order to enable interstate arrest and enforcement of civil law, an agreement specifically authorizing this activity is required. This agreement is between the Governors of the respective states, and accords the supporting state's National Guard members the same powers, authorities and immunities the supported state grants its own National Guard.

(6) Actual support operations under an agreement whereby a supporting state's National Guard is granted arrest and enforcement of civil law authority typically involves the deputizing of those National Guard members. The criteria for the deputizing of National Guard members operating in a state status (state active duty or Title 32) in support of domestic law enforcement are defined by the laws, policies, directives and executive orders that govern the specific state in which operations will be conducted.

(7) Supporting emergency forces are under the command and control of their regular leaders; however, they are under the operational control of the supported state's emergency services authorities.

e. The compact activates only following the declaration of a state of emergency by the Governor of the requesting state or the commencement of exercises or training, and are in effect as long as the state of emergency, disaster, exercises, or training is in effect.

8-7. Emergency Support Function 13 - Public Safety and Security

a. Emergency Support Function (ESF) 13 - Public Safety and Security is a classification of emergency response support provided by the Federal Emergency Management Agency at the federal level, and adapted by various state emergency management agencies. ESF 13 is synonymous for public safety and security support. It integrates public safety and security capabilities and resources to support the full range of incident management activities associated with potential or actual incidents requiring a coordinated state or federal response. At the state level, ESF 13 provides a mechanism for coordinating and providing support to local, tribal and state authorities; and support to other emergency support functions including law enforcement, public safety, and security capabilities and resources. ESF 13 capabilities support incident management requirements including, but not limited to, force and critical infrastructure protection, security planning and technical assistance, technology support, and general law enforcement assistance in both pre-incident and post-incident situations. ESF 13 is activated in situations requiring extensive public safety and security when local, tribal, and state government resources are overwhelmed or are

inadequate. They are also activated during pre-incident or post-incident situations requiring protective solutions or capabilities unique to the state government.

b. Primary responsibility for public safety lays with state, tribal, local, private-sector, and certain federal authorities. Private-sector authorities have primary responsibility for security. These entities, therefore, are typically the first line of response for public safety and security. ESF 13 supports both of these areas, when required.

c. In most incident situations, local jurisdictions have primary authority and responsibility for law enforcement activities. Mutual aid and assistance agreements with neighboring localities or state authorities may bring additional mission support. Incident operations are managed through a unified command structure. In this context, a state's resources would include members of the state National Guard that the Governor calls into state active duty. Other National Guard members may be called to duty under Title 32 if authorized by state law to perform law enforcement, security, or public safety functions.

d. Through ESF 13, state resources including the National Guard supplement local or tribal resources when requested or required. Typical requests for National Guard law enforcement support would include requests for a law enforcement security package, a security force package, a rapid reaction force package, or a multi-functional force package. State emergency management personnel retain current force package data that includes information describing the task and purpose of the force package; mission; number, rank, and function of personnel; quantities and types of equipment; special instructions; and cost information.

Chapter 9 Reporting

9-1. General

a. The status of National Guard domestic law enforcement support is a matter of national interest at the highest civil and military levels of government. Directed by both law and regulation, the National Guard Bureau and the Chief, National Guard Bureau are responsible for the timely and accurate flow of information between the several states and the Federal Government. This primary mission can only be accomplished with the support of the National Guard of the several states. To enable compliance with law and regulation, the National Guard Bureau has established reporting requirements for the National Guard.

b. Reports submitted by the several states to the National Guard Bureau are analyzed, compiled, and forwarded to senior leaders within the National Guard, the Department of Defense and other supporting agencies. These reports are vital to the effective and efficient management of National Guard personnel and equipment, and are critical to the conduct of National Guard domestic law enforcement support and mission assurance operations.

9-2. Mission Reporting

a. The timely and accurate submission of information during a domestic law enforcement support operation is essential for decision-making at all levels of leadership. It is imperative that National Guard units provide accurate assessments of their operational environment to enable situational awareness and support the local, tribal, state, and federal decision processes.

b. An alert and call-up of the National Guard to state or federal active duty in connection to National Guard domestic law enforcement support operations requires the JFHQ-State to submit the following reports to the National Guard Bureau Joint Coordination Center (JoCC).

(1) Daily Situation Report (SITREP).

(a) SITREPs are the means by which the several states keep the National Guard Bureau advised of National Guard domestic operations. Whenever National Guard assets support civilian authorities under immediate response, a declaration of emergency by a state's Governor, the expectation of a federal disaster declaration, or an actual federal disaster declaration, the affected JFHQ-State will send periodic SITREPs to the NGB JoCC. SITREPs will be sent at least once per day except during a federal emergency declaration or expectation of a federal emergency declaration when SITREPs should be submitted twice per day.

(b) SITREPs will include the following topics:

1. Own situation, disposition, and status of forces.
2. Situation overview.
3. Operations.
4. J-2.
5. Logistics.

6. Communications and connectivity.
7. Personnel.
8. Significant events.
9. Commander's evaluation and assessment.
10. Any additional remarks containing information not included in the above subparagraphs or that are unique to a particular command.
 - (2) Serious Incidents/Accident Reports.
 - (a) Use the procedures and report format outlined in AR 190-45 or AFI 31-201 to report serious incidents that occur while conducting law enforcement support operations. Include the NGB-JoCC as an addressee on all reports.
 - (b) Use the procedures and report format outlined in NGR 385-10 to report accidents that occur while conducting law enforcement support operations.
 - (c) In addition to reports required by other federal or state regulations or policies, states must notify NGB-JoCC when any of the following occurs:
 1. Loss of life or serious injury.
 2. Loss of, or damage to, government or private property valued at more than \$100,000.
 3. Loss of a government weapon.
 4. Loss of a quantity of ammunition deemed reportable by Army or Air Force regulations.
 5. Any situation in which during the course of their official duties, a National Guard member, employee, or contract guard discharges a weapon (aside from weapons training); is fired upon; inflicts injury; or sustains an injury from hostilities.
 6. Any other situation where the senior National Guard member present determines that an event of serious nature has occurred based on the nature, gravity, potential for adverse publicity, or potential consequences of the incident should be reported.
 - (d) A state judge advocate will contact the NGB Chief Counsel (NGB-JA) when either of the following circumstances occurs in connection with a National Guard member supporting a law enforcement operation:
 1. Possibility of civil liability on the part of a National Guard member.
 2. Occurrence of negative judicial rulings based wholly or in part upon the conduct of National Guard members, or volunteers, including the suppression of evidence.
 - (3) Suspicious Activity Reporting.
 - (a) Suspicious behavior is any behavior that is indicative of criminal activities, intelligence gathering, or other pre-operational planning related to a security threat to National Guard interests. Although it is often difficult to determine whether a local incident has a terrorist nexus, similar incidents across many jurisdictions may indicate the existence of a national threat. Suspicious activity reporting does not replace imminent threat warning or serious incident reporting requirements.
 - (b) The JFHQ-State will promptly submit to law enforcement authorities unvetted suspicious activity reports (SAR) and other National Guard non-intelligence reports describing a potential threat or suspicious activity, such as those referenced in paragraph (f) below, related to National Guard personnel, facilities, or forces in transit. The JFHQ-State-PM coordinates with the regional Federal Bureau of Investigation (FBI) Joint Terrorism Task Forces (JTTF) for SAR investigation and eGuardian report submission. eGuardian is an FBI law enforcement system for reporting, sharing, and analysis of suspicious activities.
 - (c) The FBI has statutory responsibility to investigate terrorism-related information. The FBI-led JTTF mission is to prevent acts of terrorism, and investigate crimes associated with acts of terrorism in an effort to identify and prosecute those responsible. The FBI JTTFs coordinate with state fusion centers and state/local law enforcement during the conduct of their investigations, and input unclassified findings of SAR into the eGuardian systems. The eGuardian system for SAR supports DOD and interagency information-sharing programs.
 - (d) Qualified National Guard military law enforcement personnel who have responsibility for performing law enforcement missions shall contact the NGB Provost Marshal for requirements to obtain reporting access to eGuardian. The FBI eGuardian system is a law enforcement system containing personally-identifiable information on certain U.S. citizens. This information is protected by the Privacy Act and other federal regulations. Force protection, antiterrorism, and security personnel who are not law enforcement-qualified and also working as part of a law enforcement function, will not have eGuardian access or receive un-redacted SAR information. Those force protection, antiterrorism, and security personnel with a demonstrated need-to-know may obtain relevant SAR information from their supporting law enforcement element.
 - (e) JFHQs-State do not report information related to a U.S. person's ethnicity, race, religion, or lawful exercise of rights guaranteed by the Constitution or federal law unless reasonable grounds exist showing a direct

relationship of such information to a specific criminal act or behavior that may pose a threat to National Guard personnel, facilities, or forces in transit.

(f) Categories of suspicious activities for reporting include:

1. Acquisition of expertise.
2. Breach or attempted incursion.
3. Eliciting information for an unlawful purpose.
4. Expressed or implied threat.
5. Flyover and/or landing.
6. Materials acquisition and/or storage.
7. Misrepresentation.
8. Sabotage, tampering, and/or vandalism.
9. Surveillance.
10. Testing of security.
11. Theft, loss, and/or diversion.
12. Weapons discovery.

(g) The JFHQ-State and components shall document, store, and exchange personally-identifiable information concerning U.S. persons, in strict conformance with federal law, DODD 5400.11-R and DODD 5200.27. Sharing of this information must comply with all existing laws and regulations safeguarding personal freedoms, civil liberties, and information privacy.

(4) After Action Report. Submit this report via the Joint Lessons Learned Information System (JLLIS) National Guard Bureau site (<https://www.jllis.mil/ngb>) at the conclusion of a National Guard domestic law enforcement support operation. See Appendix B for suggested information to include. Reports should be submitted within five duty-days after the end of a support operation.

(5) Lessons Learned Report. Submit this report via the JLLIS National Guard Bureau site (<https://www.jllis.mil/ngb>) (see Appendix C). Reports should be submitted within ten duty-days after the end of a support operation. The Lessons Learned Report documents a technique, procedure, or workaround that enabled a task to be accomplished to standard based on an identified shortcoming or deficiency. This report is mandatory for all identified lessons learned. Report observations of a technique or circumstance that significantly impacted on an operation or training event that should be shared with the National Guard community. Report issues such as shortcomings, deficiencies, or problems identified during an operation or training that precludes performance to standard.

(a) Several lessons learned reports will likely be filled for a single National Guard domestic law enforcement support operation. Each report must stand-alone and contain only one lesson learned. Acronyms and abbreviations must be spelled out when used first. Command designations must be spelled out when first used and explained. Construct each paragraph to be understood and properly interpreted by personnel from all components and all services.

(b) Unsolicited lessons learned reports are encouraged during an operation, training exercise, or joint-related activity of National Guard significance. Significant observations, lessons learned, or issues may be reported any time, regardless of their nature.

(6) NGRF Readiness Report. Each of the several states will provide a NGRF Readiness Report on the status of their NGRF tier, personnel, training, equipment, and overall readiness. The report is to be completed on the first day of each quarter or when there is a status change, whichever comes first. The report is located on Guard Knowledge Online at the link for "NGRF Readiness Report."

(7) Antiterrorism Program Report. Annually, each of the several states should complete the JFHQ-State AT Program Report and provide a copy of the report to the NGB J-34 no later than August 15th of each year. The NGB Antiterrorism Strategic Plan contains the format for the report.

9-3. NGB Provost Marshal Lessons Learned Remedial Action Program

a. The NGB Provost Marshal Lessons Learned Remedial Action Program provides a method to identify, capture, and share information collected resulting from operations, exercises, and training events. The purpose of the remedial action program is enhancing the performance of law enforcement support responses for National Guard domestic law enforcement support operations. The end state of the NGB PM Lessons Learned Remedial Action Program is the integration of lessons learned to improve the appropriate elements of doctrine, organization, training, materiel, leadership and education, people, and facilities (DOTMLPF) through the sharing of relevant information.

b. NGB PM will monitor lessons learned reports and manage the Law Enforcement Support Remedial Action Program to improve National Guard domestic law enforcement support capabilities and response. NGB PM will

identify the real-world impediments to law enforcement support capabilities, and is responsible for coordinating and tracking corrective actions throughout the National Guard, the National Guard Bureau, the Department of Defense, and the Department of Homeland Security as required.

Chapter 10 Funding

10-1. General

a. Funding of National Guard assets conducting domestic law enforcement support and mission assurance operations is a significant concern at both state and federal levels. Funding is determined by the statuses under which members of the National Guard operate while providing support to civil authorities. The successful accomplishment of related missions may require balancing the financial resources of both the Federal Government and the respective state or territorial government. Coordinating officials need to be fully aware of the deployment funding options at their disposal and the associated implications of using each specific option. Failure to understand these fiscal nuances may lead to the improper expenditure of funds and, consequently, administrative or criminal sanctions against those responsible for funding violations.

b. The Department of Defense annual appropriations to the National Guard may be used to support law enforcement support and mission assurance operations. Additionally, National Guard domestic law enforcement support and mission assurance operations in support of other federal agencies or in response to emergencies or disasters may be funded or reimbursed with federal funds through the authorities provided related federal statutes. (A detailed description of The Economy Act and Stafford Act are provided later in this chapter.)

c. Regarding federal funding, Title 32, Section 708, directs that the several states “shall appoint, designate or detail” a qualified commissioned officer of the National Guard of their respective jurisdiction who is also a commissioned officer of the Army National Guard of the United States or the Air National Guard of the United States to serve as the property and fiscal officer. The United States Property and Fiscal Officer (USPFO) is the primary focal point for federal funds and property allotted to their respective states and territories. The USPFO is, by law, accountable and responsible for all federal funds and property provided to the National Guard in their respective states, including those federal funds used to provide domestic law enforcement support and mission assurance operations. The USPFO is responsible for financial management, property accountability, federal contracting and internal review. They authenticate requirements, certify as to their authority and authorize the expenditure of federal funds for equipment, supplies, services and payroll. Note that the use of federal funds may involve federal oversight, laws and restrictions. Questions regarding the use of federal funds to support domestic law enforcement and mission assurance operations should be directed to the USPFO.

d. State funds for National Guard domestic law enforcement support and mission assurance operations are provided through specific state budgetary processes. Individual state laws and policies govern the funding of National Guard units and personnel conducting domestic law enforcement support and mission assurance operations while serving in a state active duty status.

e. A comprehensive reference addressing National Guard funding rules, regulations, processes and procedures is National Guard Pamphlet 37-1.

10-2. State Active Duty

a. States are free to employ their National Guard forces under state control for state purposes and at state expense as provided in the state’s constitution and statutes. As such service is performed in accordance with state law, National Guard members performing this type duty are said to be in state active duty status. National Guard Soldiers and Airmen serving in a state active duty status are under the command and control of the Governor and the state or territorial government. State governments bear all of the associated costs of National Guard members performing duties in a state active duty status.

b. National Guard members, operating in a state active duty status, perform duties authorized by state law that may include domestic law enforcement support and mission assurance operations. National Guard units performing such duties are subject to compliance with state financial and monetary policies, and are paid with state funds in accordance with state laws. As a minimum, state guidance should address a payroll process, salaries including daily pay rates, per diem and travel rates, leave, processes for requesting, issuing, and distributing orders, and a claims process.

c. As Commanders in Chief, Governors can directly access and utilize the National Guard’s federally assigned aircraft, vehicles, and other equipment (subject to some restrictions based on federal law and regulation) so long as

the Federal Government is reimbursed for the use of the equipment and supplies. There are specific reporting and reimbursement procedures and requirements to the Federal Government for the use of federal equipment or expenditure of federal supplies. States are liable for reimbursement (or replenishment in kind) to the Federal Government through the USPFO for:

- (1) Repair parts, other than fair wear and tear, expended in the objective area;
- (2) Petroleum, oils and lubricants expended for direct mission accomplishment; and
- (3) Incremental costs (those costs above the expenses which normally accrue during the scheduled training periods) which can be attributed directly to the domestic law enforcement support or mission assurance operation.

10-3. Title 32

a. Article 1, Section 8 of the Constitution authorizes the National Guard to operate under state control but in the service of the Federal Government. This provision for state forces to operate in the service of the Federal Government is unique to the National Guard and is codified under the authority of Title 32 U.S. Code. When conducting domestic law enforcement support and mission assurance operations under the authorities of Title 32, National Guard members are under the command and control of the state and thus in a state status, but are paid with federal funds. Under Title 32, the Governor maintains command and control of National Guard forces even though those forces are being employed “in the service of the United States” for a primarily federal purpose. Chapter 9 and Section 502(f) of Title 32 provide specific guidance related to “homeland defense activities” and “other duty” missions, enabling Governors access to federal funding for domestic missions including law enforcement support and mission assurance operations.

b. Title 32 Required Drills and Field Exercises. Title 32 Section 502(a) directs each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary of the Army or Air Force, to assemble for drill and instruction, including indoor target practice, at least 48 times each year; and participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year. DODD 5107.77 states the Chief, National Guard Bureau shall “prescribe the training discipline and training requirements for the Army National Guard and Air National Guard, and the allocation of Federal funds for the training of the Army National Guard and Air National Guard.”

c. Title 32 Funding for Other Duty. Section 502(f) of Title 32 has been used to allow members of the National Guard to be ordered to full-time National Guard duty to perform training or operational activities. This section provides that “a member of the National Guard may ... without his consent, but with the pay and allowances provided by law ... be ordered to perform training or *other duty*” in addition to those they are already prescribed to perform. This is the provision of law which was used to provide federal pay and benefits to National Guard personnel who provided security at many of the nation’s airports after September 11, 2001, and who participated in Hurricanes Katrina and Rita-related disaster relief operations. In accordance with 32 USC 502(f)(2), the President or Secretary of Defense may request operations or missions to be performed under the authority of Section 502(f).

d. Title 32 U.S. Code, Chapter 9. The Secretary of Defense may provide funds to a Governor to employ the National Guard to conduct homeland defense activities that the Secretary determines to be necessary and appropriate. The Governors of the states may request homeland defense activity funding for:

- (1) Deliberate, Planned Activities. Requests may be submitted prior to the anticipated date of a planned homeland defense activity.
- (2) Exceptional Circumstances. Requests may be submitted during or after National Guard execution of a homeland defense activity in a state active duty status. Governors shall submit the request as quickly as circumstances permit allowing members to be subsequently placed in full-time National Guard duty status (section 502(f) of Title 32).
- (3) Specific procedures for Governors to request homeland defense activity funding are contained within Department of Defense Directive 3160.01.

10-4. Title 10

a. The War Powers Clause of the Constitution grants the Federal Government the authority to mobilize and deploy National Guard units and personnel for federal missions both at home and throughout the world. Such federal service is performed under the authority of Title 10 U.S. Code, with command and control resting solely with the President and the Federal Government. When employed at home or abroad in Title 10 duty status, National Guard forces are relieved of duties as a member of their state National Guard, released from all state control, and become elements of the Reserve Component of the federal military force as members of the Army National Guard of the United States (ARNGUS) or the Air National Guard of the United States (ANGUS). National Guard units

and members in a Title 10 duty status are members of the Department of Defense and subject to compliance with related financial policies and regulations.

b. There are several sources that define federal fund obligation and expenditure authority including: (1) Title 10 U.S. Code; (2) Title 31 U.S. Code; (3) DOD authorization acts; (4) DOD appropriations acts; (5) agency regulations; and (6) Comptroller General decisions. In most cases, state, local, and federal agencies provide reimbursement for assistance provided by National Guard units and personnel operating in a Title 10 status during the conduct of domestic law enforcement support and mission assurance operations. As stated previously, the state United States Property and Fiscal Officer is the primary focal point for federal funds and property allotted to their respective states and territories for such activities.

c. All requests by civil authorities for military assistance from the Department of Defense, including National Guard in a Title 10 status, shall be evaluated by the DOD approval authorities against several criteria including cost and the impact of those costs against the DOD budget. Unless directed otherwise by the President, federal military support is provided on a reimbursable basis.

d. Cost reimbursement by other federal agencies to the Department of Defense for domestic law enforcement support and mission assurance operations is usually in accordance with the Economy Act, which mandates cost reimbursement by the federal agency requesting support. However, when a Presidential disaster or emergency declaration is declared, the Stafford Act sets the guidelines for reimbursements to federal agencies and states from federal funds set aside to support these missions.

10-5. The Economy Act (Title 31 U.S. Code, § 1535)

a. The Economy Act permits one federal agency to request support from another, or from the National Guard, provided that the requested services cannot be obtained more cheaply or conveniently by contract. Under this Act, a primary federal agency may request the support of DOD or the National Guard without a Presidential declaration of an emergency or major disaster as required by the Stafford Act.

b. This Act provides the general authority for federal interagency transactions. It authorizes interagency transactions when no other statute permits the providing agency to render the requested service. The Act requires full reimbursement to the providing agency, including indirect costs. The Act is also fully applicable to federal agency transactions with the National Guard.

c. This statute requires that federal agencies provide full reimbursement for services or support provided. Reimbursement for DOD or National Guard support provided to LEAs is not required when that support is in the normal course of military training and operations; results in benefit to the Department of Defense or National Guard that is substantially equivalent to that which would otherwise be obtained from military operations or training; or is provided under the authority of section 1004, National Defense Authorization Act for Fiscal Year 1991, as amended.

10-6. The Robert T. Stafford Disaster Relief Act (Title 42, U.S. Code, §§ 5121-5207)

a. The Stafford Act was enacted by Congress “to provide an orderly and continuing means of assistance by the Federal Government to state and local governments in carrying out their responsibilities to alleviate the suffering and damage which result from...disasters...” It is the statutory authority for federal disaster assistance within the United States and its territories.

b. The Stafford Act provides procedures for declaring an emergency or major disaster, as well as the type and amount of federal assistance available. The Act authorizes the President to provide Department of Defense assets, including National Guard members and units operating in a Title 10 status, for the relief efforts, once he or she formally declares an emergency or a major disaster. DOD assets for emergency work may be provided on a limited basis prior to the Presidential declaration.

c. The Stafford Act requires reimbursement to the Department of Defense for the incremental costs of providing support. Approval authority and reporting requirements vary depending on the duration and type of support requested. The President may direct any department or agency of the Federal Government to undertake missions and tasks on either a reimbursable or non-reimbursable basis.

d. The Department of Defense Financial Management Regulation 7000.14-R, Volume 12, Chapter 6, paragraph 060204, lists the following costs as eligible for reimbursement:

- Overtime, travel, and per diem of permanent DOD civilian personnel.
- Wages, travel, and per diem of temporary DOD civilian personnel assigned solely to performance of services directed by the executive agent.
- Travel and per diem for National Guard personnel in the Title 10 status, called to active duty by a federal official, who are assigned solely to perform services directed by the executive agent.

- Cost of work, services, and material procured under contract for the purposes of providing assistance directed by the Executive Agent.
 - Cost of materials, equipment and supplies (including transportation, repair and maintenance) from regular stocks used in providing directed assistance.
 - All costs incurred which are paid from trust, revolving, or other funds, and whose reimbursement the law requires.
 - Other costs submitted with written justification or otherwise agreed to in writing by the Joint Director of Military Support or appropriate Service representative.
- e. FEMA will reimburse the Department of Defense for the incremental costs of providing support pursuant to the Defense Coordinating Officers' tasking in response to the FEMA mission assignment. Incremental expenses are reimbursed, or those incurred by the agency providing the military assistance that-but for the request for assistance-would not otherwise have incurred these expenses.

10-7. Immediate Response Authority

DODD 3025.1 defines "Immediate Response" as any form of immediate action taken by a DOD Component or military commander, under the authority of this Directive and any supplemental guidance prescribed by the head of a DOD Component, to assist civil authorities or the public to save lives, prevent human suffering, or mitigate great property damage under imminently serious conditions occurring where there has not been any declaration of major disaster or emergency by the President or attack. Immediate response authority permits local military commanders to act immediately to save lives, prevent human suffering, and mitigate great property damage in imminently serious conditions when time does not permit approval from higher headquarters. Types of support authorized include rescue, evacuation, and emergency treatment of casualties; emergency restoration of essential public services; emergency removal of debris and explosive ordnance; and recovery and disposal of the dead. This type of support is provided on a reimbursable basis, but assistance should not be denied because the requester is unable or unwilling to commit to reimbursement. Immediate response authority is very limited and should be invoked only for bona fide emergencies. Coordination with the NGB, JDOMS and the Assistant Secretary for Homeland Defense and Americas Security Affairs should always occur in these scenarios, and in any other case potentially involving this type of assistance to civil authorities. Whenever providing immediate response, commanders must notify their higher headquarters as soon as possible, in turn, a state's JFHQ JOC should provide a situation report to the NGB JoCC as soon as possible. As a general rule, this assistance should not exceed 72 hours. To obtain reimbursement for costs incurred as a result of an immediate response, DOD should request reimbursement from the state or local government to whom assistance was provided. (It should be noted that state and local governments often do not have the funding available to reimburse DOD, requiring DOD to pursue reimbursement through FEMA or within DOD resources.)

10-8. The Antideficiency Act (Title 31 U.S. Code, §§ 1341-42, 1511-19)

This Act is a number of laws within Title 31 that generally prohibits any officer or employee of the United States from the over-obligation and over-disbursement of federal funds, acceptance of voluntary services and the obligation or expenditure of appropriated funds in advance of an appropriation by Congress. Specifically, the act prohibits:

- a. Making or authorizing an expenditure from, or creating or authorizing an obligation under, any appropriation or fund in excess of the amount available in the appropriation or fund unless authorized by law (§ 1341 (a)(1)(A)).
- b. Involving the government in any obligation to pay money before funds have been appropriated for that purpose, unless otherwise allowed by law (§ 1341 (a)(1)(B)).
- c. Accepting voluntary services for the United States, or employing personal services not authorized by law, except in cases of emergency involving the safety of human life or the protection of property (§ 1342). Making obligations or expenditures in excess of an apportionment or reappropriation, or in excess of the amount permitted by agency regulations (§ 1517 (a)).

**Appendix A
References**

**Section I
Required References**

This section contains no entries.

**Section II
Related References**

AFI 10-245
Antiterrorism (AT)

AFI 10-801
Assistance to Civilian Law Enforcement Agencies

AFI 14-104
Oversight of Intelligence Activities

AFI 23-119
Exchange, Sale, or Temporary Custody of Nonexcess Personnel Property

AFI 31-201
Security Police Standards and Procedures

AFI 31-207
Arming and Use of Force by Air Force Personnel

AFI 91-301/ANGSUP 1
Air Force Occupational and Environmental Safety, Fire Prevention, and Health (AFOSH) Program

Air Force General Counsel Guidance Document
Posse Comitatus

AR 130-5/AFMD 10
Organization and Functions of National Guard Bureau

AR 190-14
Carrying of Firearms and Use of Force for Law Enforcement and Security Duties

AR 190-16
Physical Security

AR 190-45
Law Enforcement Reporting

AR 190-51
Security of Unclassified Army Property (Sensitive and Nonsensitive)

AR 195-3
Acceptance, Accreditation, and Release of United States Army Criminal Investigation Command Personnel

August 18, 2010

NGR 500-5/ANGI 10-208

AR 525-13

Antiterrorism

AR 525-27

Army Emergency Management Program

AR 700-131

Loan, Lease, and Donation of Army Material

CJCSI 3121.01B

Standing Rules of Engagement/Standing Rules for the Use of Force for US Forces

CJCSI 3150.25D

Joint Lessons Learned Program

The Constitution of the United States of America

Defense Critical Infrastructure Program (DCIP) Security Classification Guide

DHS Risk Lexicon

DOD 5400.11-R

Department of Defense Privacy Program

DOD 7000.14-R

Financial Management Regulation, Volumes 1-15

DOD Manual 3020.45-V2

Defense Critical Infrastructure Program (DCIP): DCIP Remediation Planning

DOD Manual 3025.1

Manual for Civil Emergencies

DOD O-2000.12-H

DOD Antiterrorism Handbook

DOD O-2000.12-P

DOD Antiterrorism Strategic Plan

DODD 1030.01

Victim and Witness Assistance

DODD 2000.12

DOD Antiterrorism (AT) Program

DODD 2000.15

Support to Special Events

DODD 3000.3

Policy for Non-Lethal Weapons

DODD 3020.40

DOD Policy and Responsibilities for Critical Infrastructure

DODD 3025.1

Military Support to Civil Authorities (MSCA)

DODD 3025.12

Military Assistance for Civil Disturbances (MACDIS)

DODD 3025.13

Employment of Department of Defense Resources in Support of the United States Secret Service

DODD 3025.15

Military Assistance to Civil Authorities

DODD 3160.01

Homeland Defense Activities Conducted by the National Guard

DODD 5030.46

Assistance to the District of Columbia Government in Combating Crime

DODD 5105.77

National Guard Bureau (NGB)

DODD 5200.27

Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense

DODD 5210.56

Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties

DODD 5400.11

DOD Privacy Program

DODD 5525.5

DOD Cooperation with Civilian Law Enforcement Officials

DODD 6495.01

Sexual Assault Prevention and Response Program

DODI 2000.16

DOD Antiterrorism Standards

DODI 3020.45

Defense Critical Infrastructure Program (DCIP) Management

FM 3-19.1

Military Police Operations

FM 3-19.13

Law Enforcement Investigations

FM 3-19.15

Civil Disturbance Operations

FM 3-19.50

Police Intelligence Operations

FM 3-22.40

Multi-Service Tactics, Techniques, and Procedures for the Employment of Nonlethal Weapons

Fusion Center Guidelines (DOJ/DHS)

August 18, 2010

NGR 500-5/ANGI 10-208

Homeland Security Presidential Directive-7

Critical Infrastructure Identification, Prioritization, and Protection

JP 1-02

Department of Defense Dictionary of Military and Associated Terms

JP 3-08

Interagency, Intergovernmental Organization and Nongovernmental Organization Coordination During Joint Operations, Volumes I and II

JP 3-27

Homeland Defense

JP 3-28

Civil Support

National Criminal Intelligence Sharing Plan

National Guard Bureau Antiterrorism Strategic Plan

National Guard Bureau Non-Lethal Capabilities Concept of Operations

National Guard Domestic Operations Manual

National Guard Pamphlet 37-1

Financial Management Guide for National Guard Executives

National Guard Pamphlet 95-5

Use of Army National Guard Aircraft

National Guard Reaction Force (NGRF) Implementation Plan

National Incident Management System

National Infrastructure Protection Plan

National Response Framework

NGR 385-10

Army National Guard Safety Program

NGR 500-1/ANGI 10-8101

National Guard Domestic Operations

NGR 500-2/ANGI 10-801

National Guard Counterdrug Support

Office of Management and Budget Circular No. A-130

Management of Federal Information Resources

Public Law 104-321

Emergency Management Assistance Compact

Public Law 107-56

USA Patriot Act of 2001

Public Law 107-296

Homeland Security Act of 2002

Public Law 110-181

National Defense Authorization Act for Fiscal Year 2008

TC 3-19.5

Nonlethal Weapons Training

Title 5, USC, § 552a

Records maintained on individuals

Title 10, USC

Armed Forces

Title 18, USC, § 1385

The Posse Comitatus Act, as amended

Title 28, USC, §§ 2671-2680

The Federal Torts Claims Act

Title 31, USC, §§ 1341-42, 1511-19

The Antideficiency Act, as amended

Title 31, USC, § 1535

The Economy Act, as amended

Title 32, USC

National Guard

Title 42, USC, § 5121 et seq

The Robert T. Stafford Disaster Relief Act, as amended

Section III

Prescribed Forms

This section contains no entries.

Section IV

Related Forms

This section contains no entries.

Appendix B

National Guard Domestic Law Enforcement Support Operations After Action Report

Part I: Executive Summary (completed by the commander)

Type of Emergency: (law enforcement support, civil emergency, natural disaster, other)

Location of Emergency: (city, county, and state)

Mission:

Objectives:

General Description:

Dates:

Preparation

Phase I: Alert

Phase II: Planning

Phase III: Called-up under State Active Duty or Title 32 authority

Phase IV: Training

Response

Phase V: Deployment

Phase VI: Crisis Response – Law Enforcement Support

Phase VII: Transition

Recovery

Phase VIII: Personnel and Equipment Accountability

Phase IX: Maintenance

Phase X: After Action - Lessons Learned Reporting and Mission Cost Estimation

Phase XI: Demobilization (return to M-day status)

Major Participants: (National Guard, States, Local, Federal agencies, and EMAC)

National Guard Strength:

ARNG Unit or Organization Designation, Number of Officers, Warrant Officers, Enlisted by Status (UTA, MUTA, State Active Duty, Title 32)

ANG Unit or Organization Designation, Number of Officers, Warrant Officers, Enlisted by Status (UTA, MUTA, State Active Duty, Title 32)

Operations Summary: (Chronology of significant events by phase)

Communications:

Training: (Evaluation of the effectiveness of civil disturbance and other training conducted prior to the occurrence of the incident. Number of hours of civil disturbance and other refresher training conducted by each unit or element during this operation.)

Significant Issues:

Personnel:

Intelligence:

Operations:

Organization:

Training:

Logistics:

Communications:

Material:

Other:

Limitations:

Lessons Learned: (list only the identification number of each lessons learned report. See Lessons Learned Report - Appendix C)

Part II. Administrative and Logistical.

Administrative:

Public Affairs

Special Services

Morale and Discipline

National Guard Injuries or Casualties

Logistics and Equipment: (Special equipment, supplies used, and source. Provide type of ARNG or ANG aircraft used and number of hours flown by type, if applicable.)

Part III. Costs (Total cost of state active duty, including as a minimum the following:)

Pay

Subsistence

Housing

Transportation

Maintenance

Supplies

Equipment

Fuel and petroleum

Funds paid by other state agencies

Reimbursable costs

Part IV. Optional

Chronology of events

OPLAN or execution orders

Standing operating procedures

Recommendations

Appendix C

National Guard Domestic Law Enforcement Support Lessons Learned Report (<https://www.jllis.mil/ngb>)

1. Unit:
2. Event Date:
3. Document Date:
4. Classification:
5. Operation or Exercise Name:
6. Topic/Issue:
7. Observation:
8. Discussion:
9. Recommendation:
10. Implications:
11. Event Description:
12. Name/Rank/E-mail Address/Phone Number:

Lessons Learned Report Example

1. Unit: 1411th Military Police Battalion
2. Event Date: 10 January 2010
3. Document Date: 28 January 2010
4. Classification: Unclassified
6. Topic/Issue: JTF – State Operation Alpha
7. Observation: NGB Joint Staff requested each JFHQ State to create a set of standardized links on their website for law enforcement support information spanning all functional areas.
8. Discussion: NGB message, Subject: Standardization of Homepages directed mission websites links be established on GKO for use during a crisis. Policy regarding the standardization of information was provided by the appropriate NGB staff elements. JFHQ-State staffs ensured that information was entered through these websites accessible by the NGB Adaptive Battle Staff. Outside agencies were also able to access this information.
9. Recommendation: Continue the communication/coordination/collaboration effectiveness provided in the standardization of websites and policy. Ensure that policy is promulgated as early as possible during operations.
10. Implications: Interagency situational awareness is degraded without website standardization.
11. Event Description: JTF-State Operation Alpha provided law enforcement support.
12. Name/Rank/E-mail Address/Phone Number: LTC Smart/msmart@jtf.state.mil/(123) 456-7890, DSN 999-7890

Appendix D The Posse Comitatus Act

The Posse Comitatus Act (PCA) (18 USC 1385). “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.”

1. Background. The Act has historically been interpreted to limit a variety of activities by the military, particularly its support to law enforcement entities. An 1881 ruling by the Attorney General of the United States, (17 U.S. Op Attorney General 71), precludes employing troops as a posse comitatus to aid the U.S. Marshal in arresting persons in Kentucky charged with robbing officers of the government. Moreover, the military was used extensively as a *posse comitatus* to enforce various Civil War Reconstruction-era laws. Congress sought to end the widespread use of federal Soldiers in civilian law enforcement roles for several reasons including the Army’s increasingly vocal objections to “commandeering of its troops;” and southerners’ complaints that the northern-based federal military was unfairly enforcing laws against them. Accordingly, congress passed the PCA in 1878 as a rider to an Army appropriations act limiting the circumstances under which the Army could be used as a posse comitatus to “execute the laws.”

2. Non-application to Military Members. The Posse Comitatus Act does NOT apply to:

a. Members of the National Guard not in federal service such as when serving in a state active duty or Title 32 status.

b. A member of a military service when off duty and acting in a private capacity. A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DOD authorities.

c. A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

d. Members of the Coast Guard.

e. Members who are not a “part of the Army or Air Force.” Note that in a 1970 Department of Justice opinion, Army personnel assigned to the Department of Transportation (DOT) acted as U.S. Marshals, and were determined not in violation of the PCA. Circa 1970 law (49 USC 1657) expressly authorized the detailing of military members to DOT, and under the statute, assigned members were not charged against statutory limits on grade or end strength of the Army. Furthermore, the members were not subject to direct or indirect command of their military department or any military officer. The Department of Justice determined the military members were DOT employees for the duration of the detail and they were not “part of the Army or Air Force.”

3. Application to Military Members. The Posse Comitatus Act DOES apply to and *restricts*:

a. Active duty personnel in the Army and Air Force. Be aware that most courts interpreting the Posse Comitatus Act have refused to extend its terms to the Navy and Marine Corps. However, in 10 USC 375, Congress directed the Secretary of Defense to establish regulations forbidding direct participation “by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity.” The Secretary of Defense has done so in DOD Directive 5525.5 with change 1. The Secretary of Defense and Secretary of the Navy (for the Navy and Marine Corps) may grant exceptions on a case-by-case basis.

b. Reservists on active duty, active duty for training, or inactive duty for training.

c. National Guard personnel in federal service (i.e. Title 10 status).

d. Civilian employees of DOD when under the direct command and control of a military officer.

4. Prohibited Law Enforcement Actions. According to DOD Directive 5525.5, the Posse Comitatus Act PROHIBITS military members in a Title 10 status from rendering direct law enforcement assistance, including:

a. Interdiction of a vehicle, vessel, aircraft, or other similar activity.

b. Search or seizure.

c. Arrest, apprehension, stop and frisk, or similar activity.

d. Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.

5. Permitted Actions. The “Military Purpose Activities” described in DOD Directive 5525.5 defines actions which do NOT apply to PCA. The actions are permitted for furthering a military or foreign affairs function of the United States. The primary purpose of the activities must be to further a military interest, and civilians may receive an incidental benefit. Such military purposes include:

- a. Investigations and other actions related to enforcement of the Uniform Code of Military Justice.
- b. Investigations and other actions that are likely to result in administrative proceedings by DOD, regardless of whether there is a related civil or criminal proceeding.
- c. Investigations and other actions related to a commander’s inherent authority to maintain law and order on a military installation or facility. Civilians may be detained for an on-base violation long enough to determine whether the civilian authorities are interested in assuming the prosecution.
- d. Protection of classified military information or equipment.
- e. Protection of DOD personnel, DOD equipment, and official guests of the DOD.
- f. Other actions undertaken primarily for a military or foreign affairs purpose.

6. Exceptions to the PCA.

a. Constitutional Exceptions. The President based on his authority as the Commander in Chief, has the authority to use the military in cases of emergency and to protect federal functions and property and preserve public order. Military commanders, by extension of this authority, may respond in such cases as well, pursuant to Immediate Response Authority. In the case of civil disturbances (which may result from a terrorist act), military commanders may rely on this authority, which is contained in DOD Directive 3025.12. Specifically the President acting through the Department of Defense may:

- (1) Enforce civilian laws on military installations.
- (2) Protect foreign property within the United States, such as protecting foreign embassies in the United States.
- (3) Protect federal property and federal functions, such as the use of forces to protect the Pentagon from anti-war demonstrators and the use of the District of Columbia National Guard to assist the U.S. Capital Police secure the area around the Capital.
- (4) Provide an immediate response to prevent the imminent loss of life or wanton destruction of property when duly constituted authorities are unable to control a situation.
- (5) Further a military purpose.

b. Statutory Exceptions. The Insurrection Act, codified as 10 USC §§ 331-335, provides the primary statutory exceptions pertinent to terrorism scenarios. These laws deal with the President’s authority to call into federal service the militia of any state, and use the armed forces as he considers necessary to remove unlawful obstructions, combinations, or assemblages; enforce laws; or to suppress rebellion. Congress created several other exceptions to the PCA as illustrated below. Consult the staff judge advocate for other statutes containing exceptions to the PCA.

- (1) Military support for civilian law enforcement agencies (including information sharing, use of military equipment [e.g. vessels and aircraft, etc.] and facilities, and training of civilian law enforcement agents by military personnel, subject to certain limitations). Excluded from this exception is direct military participation in a search, seizure, arrest, or other similar activity unless such activity is otherwise authorized by law.
- (2) Counter-drug support (including aerial and ground reconnaissance, intelligence analysis, and training, subject to certain limitations). Certain aspects of support require Service or DOD approval.
- (3) Quelling insurrections and domestic violence by, for example, restoring order, preventing looting, and engaging in other law enforcement activities. An example is the use of forces to quell riots after the Rodney King verdict in 1992.
- (4) Disaster relief (Stafford Act). The Governor of a state where a major disaster has occurred may request that the President direct military personnel to assist in emergency work to preserve life and property. While disaster relief provided by federal forces does not necessitate the PCA, possible security actions at disaster sites may raise PCA issues.
- (5) Defense against weapons of mass destruction (including advice and training, use of equipment, and emergency response teams).
- (6) Restore public order as a result of an epidemic or serious public health emergencies.

c. Department of Justice Interpretations. The Department of Justice interpreted constitutional and statutory exceptions to PCA to permit a variety of military support to civil law enforcement officials. The following do not violate PCA:

- (1) Sky marshals under authority of the Department of Transportation as described above.
- (2) Translators in monitoring court-authorized civilian wiretaps.

- (3) Operation of military aircraft and airborne surveillance equipment in counter-terrorism investigations.
- (4) Use of infrared radar technology in law enforcement.
- (5) Use of drug detector dogs.

7. Where the PCA Applies - Extraterritorial Effect of the PCA.

a. A 1989 Department of Justice Office of Legal Counsel opinion concluded that the PCA does not have extraterritorial application. Some courts have adopted the view that the PCA imposes no restriction on the use of U.S. armed forces abroad, noting that Congress intended to preclude military intervention in domestic affairs.

b. Note, however, that DOD policy, as contained in DOD Directive 5525.5 applies to all U.S. forces wherever they may be, subject to Secretary of Defense exception based on compelling and extraordinary circumstances necessitating the exception of the prohibition against direct military assistance with regard to military actions outside the territorial jurisdiction of the U.S.

8. The Effects of Violating the PCA.

a. Criminal Sanctions. Two years imprisonment, fine, or both.

b. Inability to Convict Offenders. When military members violate the PCA, it may result in the government's inability to convict offenders.

c. Dismissal of charges. Not likely to be considered an appropriate remedy as the PCA is a criminal statute.

d. Personal Liability. Under the Federal Tort Claims Act, military personnel acting in violation of the PCA may be found to not be acting within the scope of their employment, and therefore may be subject to individual personal liability.

9. See Appendix E for a list of statutory authorities dealing with the use of the armed forces in support of civilian law enforcement and other authorities.

Appendix E

Statutory Authorities for the Use of the Armed Forces

18 U.S.C. § 1385, The Posse Comitatus Act

10 U.S.C. §§ 371-382, Military Support for Civilian Law Enforcement Agencies

10 U.S.C. §§ 331-35, Insurrection

10 U.S.C. § 2674, Operation and Control of Pentagon Reservation and Defense Facilities in National Capital Region. Secretary of Defense may appoint military or civilian personnel or contract personnel to perform law enforcement and security functions for property occupied or under the jurisdiction, custody, and control of the Department of Defense, and located in the National Capital Region.

Public Law 94-524, Presidential Protection Assistance Act of 1976, October 17, 1976. DOD may provide services, equipment and facilities to the Secret Service in performing its duties to protect the President.

P.L. 107-117 §§ 911 and 912, DOD Appropriations Act of 2002, January 17, 2002.

Executive Departments may provide services (including personnel), equipment and facilities when requested by the Capitol Police Board ... [to assist] the United States Capital Police in duties directly related to protection of members of Congress. In an emergency, the Chief of the Capital Police may enter into agreements with the District of Columbia to deputize members of the District of Columbia National Guard, who are qualified for law enforcement functions, for duty with the Capital Police for the purpose of policing the Capital grounds.

P.L. 107-40, Joint Resolution, Authorization for the Use of Military Force. Authorizing the President to use all necessary and appropriate force against nations, organization and persons associated with the attacks of September 11, 2001.

Homeland Security Act of 2002 § 886. Sense of Congress Reaffirming the Continuing Importance and Applicability of the Posse Comitatus Act.

16 U.S.C. § 23, Detail of troops for protection of park. Authorizing the Secretary of the Army to detail troops to protect Yellowstone National Park from trespassers and to remove intruders.

16 U.S.C. § 78, Detail of troops to Sequoia and Yosemite Parks. Authorizing the Secretary of the Army to detail troops to prevent trespassers and remove intruders.

16 U.S.C. § 593, Protection of timber in Florida. Authorizing the President to employ the land and naval forces to protect timber in Florida.

16 U.S.C. § 1861, Enforcement. Authorizing DOD to assist in the enforcement of the Fishery Conservation and Management Act of 1976.

18 U.S.C. § 112, Protection of foreign officials, official guests, and internationally protected persons. The Attorney General may request assistance of DOD in enforcing prohibitions on the assault of foreign officials, official guests of the United States, or other internationally protected persons.

18 U.S.C. § 175a, Requests for military assistance to enforce prohibitions with respect to biological weapons in certain emergencies. Authorizing the Attorney General to request the Secretary of Defense to provide assistance in support of DOJ activities to enforce prohibitions on the development, stockpiling, or transfer of any biological agent, toxin or delivery system for use as a weapon, in an emergency situation involving a biological weapon of mass destruction.

18 USC 2332e, Requests for military assistance to enforce prohibitions with respect to chemical weapons in certain emergencies. Authorizing the Attorney General to request the Secretary of Defense to provide assistance in support of DOJ activities to enforce prohibitions on the development, stockpiling, or transfer of any chemical for use as a weapon, in an emergency situation involving a chemical weapon of mass destruction.

18 U.S.C. § 351, Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties. FBI may request DOD assistance in investigating violations of the prohibitions on the assassination, kidnapping or assault of named officials.

18 U.S.C. § 831(e), Prohibited transactions involving nuclear materials. Two categories of DOD assistance to DOJ authorized as specific exceptions to the Posse Comitatus Act: (1) that provided for in Title 10, Chapter 18 and (2) in emergencies, the use of DOD personnel to arrest persons and conduct searches and seizures with respect to violations of prohibitions on certain transactions involving nuclear materials.

18 U.S.C. § 1116, Murder or manslaughter of foreign officials, official guests, or internationally protected persons. The Attorney General may request assistance of DOD in enforcing prohibitions on the murder or manslaughter of foreign officials, official guests of the United States, or other internationally protected persons.

18 U.S.C. § 1751, Presidential and Presidential staff assassination, kidnapping and assault penalties. FBI may request DOD assistance in investigating violations of the prohibitions on the assassination, kidnapping, or assault of named officials.

19 U.S.C. § 507, Officers to make character known; assistance for officers. Officers of the customs service have the authority to demand the assistance of any person in making arrests, searches, or seizures authorized by any law enforced or administered by the customs officers.

22 U.S.C. § 408, Use of land and naval forces to prevent exportation. The President may employ such part of the land and naval forces as he deems necessary to prevent the illegal exportation of war materials.

22 U.S.C. § 461, Enforcement by courts; employment of land or naval forces. The President may employ the land and naval forces to enforce court orders for the purpose of taking possession of vessels that have violated neutrality laws.

22 U.S.C. § 462, Compelling foreign vessels to depart. The President may employ the land or naval forces either to compel a foreign vessel to depart the U.S. or to prevent such departure.

25 U.S.C. § 180, Settling on or surveying lands belonging to Indians by treaty. The President may employ such military force as he deems necessary to remove persons unlawfully settling on or surveying Indian lands.

42 U.S.C. § 26, Isolation of civilians for protection of military, air and naval forces. The service secretaries are authorized to assist the states in caring for persons whose detention, isolation, quarantine or commitment to institutions may be necessary for the protection of service members against venereal diseases.

42 U.S.C. § 97, State health laws observed by United States officers. Military officers commanding any fort or station upon the seacoast must assist in the execution of state quarantines and other restraints with regard to vessels arriving in or bound for the U.S. 42 U.S.C. § 1989, United States magistrate judges; appointment of persons to execute warrants. Persons appointed by magistrate judges to execute warrants related to certain specified offenses have the authority to summon to their aid “. . . bystanders or posse comitatus of the proper county or such portion of the land or naval forces of the United States, or of the militia, as may be necessary . . .” to enforce those warrants.

43 U.S.C. § 1065, Summary removal of enclosures. The President is authorized to employ military force to remove and destroy any unlawful enclosure of any public lands.

48 U.S.C. § 1418, Employment of land and naval forces in protection of rights. The President may employ the land or naval forces to protect the rights of a discoverer of a guano island, or of his widow, heir, executor, administrator, or assigns.

48 U.S.C. § 1422, Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress. The Governor of Guam, “whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, . . . may summon the posse comitatus or call out the militia or request the assistance of the senior military or naval commander of the Armed Forces of the United States in Guam, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities.”

48 U.S.C. § 1591, Governor and Lieutenant Governor; term of office; qualifications; powers and duties; annual report to Congress. The Governor of the Virgin Islands, “whenever it becomes necessary, in case of disaster, invasion, insurrection, or rebellion, or imminent danger thereof, or to prevent or suppress lawless violence, . . . may summon the posse comitatus or call out the militia or request the assistance of the senior military or naval commander of the Armed Forces of the United States in the Virgin Islands or Puerto Rico, which may be given at the discretion of such commander if not disruptive of, or inconsistent with, his Federal responsibilities.”

Appendix F

Procedures for Requesting Nonlethal Equipment from the Consequence Management Support Center (CoMSUPCEN)

The CoMSUPCEN is the logistical hub for the receipt, storage and distribution of nonlethal equipment. Procedures for equipment requisition and replacement are outlined below.

1. Procedures for requesting crowd control module legacy sets.

a. States will submit requests for use of the NGB legacy sets via the Joint Information Exchange Environment’s (JIEE) request for assistance (RFA) process. All RFAs will include an attached memorandum, signed by the State J3 requesting the use of the legacy sets. This memorandum will provide the following information to ensure clarity of the request:

1) Reason for request of the legacy sets. This will include all the elements of a mission statement. It will explain if the request is for training or operational use, and describe the mission the use of the legacy sets will be supporting.

2) The number of personnel that will be supported by the request. This will allow the NGB-PM/J-34 to determine the optimum numbers of legacy sets to support the RFA based on operational requirements.

3) Shipping data. Provide the physical shipping address, Department of Defense Activity Address Code, and detailed contact information for the individual to receive the equipment.

4) Date the requested nonlethal equipment will be required.

5) Date the nonlethal equipment will be returned to the CoMSUPCEN.

6) A point of contact for overall responsibility of the RFA to provide additional details if required.

b. The submitting State will ensure that the suspense date for the RFA is at least 90 days in advance of the date the equipment is required. These RFAs will be approved by the State's J-3 or his designee, prior to submission, and submitted through the State's JOC to the NGB-JoCC.

c. Upon receipt, the NGB-JoCC will assign the RFA to the NGB Provost Marshal/J-34 for staffing and approval.

d. Upon approval, the NGB Provost Marshal/J-34 will forward a memorandum signed by the NGB J-3 or J-34, via JIEE, to the requesting state. Additionally, the signed approval memo is provided to the Army National Guard's Readiness Logistics Office (NGB-ARL-E) (copy furnished CoMSUPCEN) for execution of the loan.

e. Upon receipt of the approval memorandum, the requesting state will update within JIEE the RFA suspense date to reflect the actual date the legacy sets are needed. Once the state actually receives the equipment, the state will update the JIEE RFA to reflect the anticipated date the equipment will be returned.

f. After use, and the legacy sets have been returned to the CoMSUPCEN, the NGB-JoCC will advise the state to close-out the RFA in JIEE.

g. Replenishment funding for the legacy sets is the responsibility of the requesting State, and will be coordinated directly with the CoMSUPCEN.

2. Procedures for requesting crowd control gear.

a. States will submit requests for use of crowd control gear via a JIEE request for assistance. The submitting State will ensure that the suspense dates for the RFA is at least 90 days in advance of the date the equipment is required. These RFAs will be approved by the State's J3 or his designee, prior to submission, and submitted through the State's JOC to the NGB-JoCC.

b. Upon receipt, the NGB-JoCC will assign the RFA to the NGB Provost Marshal/J-34 for staffing and approval. Once approved, the NGB Provost Marshal/J-34 will advise the requesting state via JIEE, and authorize direct contact with the CoMSUPCEN for coordination and delivery of the crowd control gear.

c. Upon receipt of the approval memorandum, the requesting state will update the RFA suspense within JIEE to reflect the required date the crowd control gear is needed. Upon actual receipt of the equipment, the requesting state will update the RFA suspense date to reflect the anticipated date the equipment will be returned.

d. After use, and the crowd control gear has been returned to the CoMSUPCEN, the NGB-JoCC will advise the state to close the RFA in JIEE.

e. Funding to replace broken and missing items is the responsibility of the State that used the equipment, and will be coordinated directly with the CoMSUPCEN.

3. Emergency request procedures for legacy sets and crowd control gear. If an emergency exists where a State deems it necessary to request legacy sets in an expedient manner, the State JOC shall immediately contact the NGB JoCC. Initial communication shall be via telephone, and followed up with a detailed email to the NGB JoCC Team Chief. This communication shall provide the same detailed information required for non-emergency legacy set requests (paragraph 1 above). Upon notification, the NGB JoCC shall immediately inform the NGB Provost Marshal/J-34 of the emergency request. In turn, after clarifying the emergency request, the J-34 or his representative shall immediately contact the 3 to initiate the emergency action to ship the requested legacy set or other crowd control equipment. When time permits, after de-escalation of the emergency, the State will generate an RFA in accordance with procedures outlined in paragraphs 1 and 2 above.

Glossary

Section I
Abbreviations and Acronyms

AFI

Air Force instruction

AFMD

Air Force mission directive

ANG

Air National Guard

ANGUS

Air National Guard of the United States

ANGSUP

Air National Guard supplement

AOR

area of responsibility

AR

Army regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

AT

antiterrorism

AT/FP

antiterrorism/force protection

BSO

border security operations

C2

command and control

CBRNE

chemical, biological, radiological, nuclear, and high-yield explosives

CD

counterdrug

CERFP

CBRNE Enhanced Response Force Package

CI/KR

critical infrastructure/key resources

August 18, 2010

NGR 500-5/ANGI 10-208

CIP

critical infrastructure protection

CJCS

Chairman of the Joint Chiefs of Staff

CJCSI

Chairman of the Joint Chiefs of Staff instruction

CN

counternarcotic

CNGB

Chief, National Guard Bureau

CoMSUPCEN

consequence management support center

CONOPS

concept of operations

CS

civil support

CT

counterterrorism

DANG

Director, Air National Guard

DARNG

Director, Army National Guard

DCI

defense critical infrastructure

DCIP

Defense Critical Infrastructure Program

DCMA

Defense Contract Management Agency

DHS

Department of Homeland Security

DOD

Department of Defense

DODD

Department of Defense directive

DODI

Department of Defense instruction

DOJ

Department of Justice

DOMS

Director of Military Support

DOT

Department of Transportation

DOTMLPF

doctrine, organization, training, materiel, leadership and education, people, and facilities

DSCA

defense support of civil authorities

EMAC

emergency management assistance compact

ESF

emergency support function

FBI

Federal Bureau of Investigation

FM

field manual

FP

force protection

FTCA

Federal Torts Claims Act

HD

homeland defense

HS

homeland security

ICS

Incident command system

JDOMS

Joint Director of Military Support

JFHQ-State-PM

Joint Force Headquarters – State Provost Marshal

JFHQ-State

Joint Force Headquarters – State

JIEE

joint information exchange environment

JLLIS

joint lessons learned information system

JOC

joint operations center

JoCC

joint coordination center

JP

joint publication

JTF

joint task force

JTTF

joint terrorism task force

JTF-State

Joint Task Force - State

LEA

law enforcement agency

LETIC

law enforcement threat information cell

MOA

memorandum of agreement

MCS

multiagency coordination systems

NG

National Guard

NGB

National Guard Bureau

NGB-JoCC

National Guard Bureau joint coordination center

NGCS

National Guard civil support

NGDO

National Guard domestic operations

NGR

National Guard regulation

NGRF

National Guard reaction force

NIMS

national incident management system

NIPP

National Infrastructure Protection Plan

NISP

National Industrial Security Program

NLC
nonlethal capabilities

NLCS
nonlethal capability sets

NLW
nonlethal weapon

NRF
national response framework

NSSE
national special security event

PCA
Posse Comitatus Act

PM
provost marshal

PM-J-34
Provost Marshal-Antiterrorism, Force Protection and Security

RFA
request for assistance

ROE
rules of engagement

RUF
rules for the use of force

SAD
state active duty

SAR
suspicious activity reporting

SEAR
special events assessment rating

SIR
serious incident report

SITREP
situation report

SOFA
status-of-forces agreement

SSL
sector-specific lead

TAG
the adjutant general

TC
training circular

TWG
threat working group

USAF
United States Air Force

USC
United States Code

USPFO
United States Property and Fiscal Officer

USNORTHCOM
United States Northern Command

USPACOM
United States Pacific Command

USSOUTHCOM
United States Southern Command

WMD
weapons of mass destruction

WMD-CST
weapons of mass destruction - civil support team

Section II
Terms

Air National Guard

That part of the federally recognized organized militia of the several states that is an air force, is trained, and has its officers appointed under the sixteenth clause of section 8, Article I of the Constitution; and is organized, armed, and equipped wholly or partly at Federal expense. (AR 130-5/AFMD 10)

Air National Guard of the United States

The Reserve Component of the Air Force, all of whose members are members of the Air National Guard. (Title 10 U.S. Code, § 101)

antiterrorism

Defensive measures used to reduce the vulnerability of individuals and property to terrorist acts, to include limited response and containment by local military and civilian forces. Also called AT. (JP 1-02)

Army National Guard

That part of the federally recognized organized militia of the several states that is a land force, is trained, and has its officers appointed under the sixteenth clause of section 8, Article I of the Constitution; and is organized, armed, and equipped wholly or partly at Federal expense. (AR 130-5/AFMD 10)

Army National Guard of the United States

The Reserve Component of the Army, all of whose members are members of the Army National Guard. (Title 10 U.S. Code, § 101)

civil authorities

Those elected and appointed officers and employees who constitute the government of the United States, the governments of the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, United States possessions and territories, and political subdivisions thereof. (JP 1-02)

civil disturbance

Group acts of violence and disorder prejudicial to public law and order. (JP 1-02)

civilian law enforcement official

An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of that agency. (DODD 5525.5)

civil support

Department of Defense support to civil authorities for domestic emergencies, and for designated law enforcement and other activities. Also called CS. (JP 1-02)

command and control

The exercise of authority and direction by a properly designated commander over assigned and attached forces in the accomplishment of the mission. Command and control functions are performed through an arrangement of personnel, equipment, communications, facilities, and procedures employed by a commander in planning, directing, coordinating, and controlling forces and operations in the accomplishment of the mission. Also called C2. (JP 1-02)

counterdrug

Those active measures taken to detect, monitor, and counter the production, trafficking, and use of illegal drugs. Also called CD and counternarcotics (CN). (JP 1-02)

counterterrorism

Operations that include the offensive measures taken to prevent, deter, preempt, and respond to terrorism. Also called CT. (JP 1-02)

critical infrastructure

Systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, national public health or safety, or any combination of those matters. (Public Law 107-56)

critical infrastructure protection

Actions taken to prevent, remediate, or mitigate the risks resulting from vulnerabilities of critical infrastructure assets. Depending on the risk, these actions could include: changes in tactics, techniques, or procedures; adding redundancy; selection of another asset; isolation or hardening; guarding, etc. Also called CIP. (JP 1-02)

defense critical asset

An asset of such extraordinary importance to DOD operations in peace, crisis, and war that its incapacitation or destruction would have a very serious, debilitating effect on the ability of the Department of Defense to fulfill its missions. (DODD 3020.40)

defense critical infrastructure

DOD and non-DOD networked assets essential to project, support, and sustain military forces and operations worldwide. (DODD 3020.40)

defense critical infrastructure program

A DOD risk management program that seeks to ensure the availability of networked assets critical to DOD missions. Activities include the identification, assessment, and security enhancement of assets essential for executing the National Military Strategy. (DODD 3020.40)

defense support of civil authorities

Civil support provided under the auspices of the National Response Plan. Also called DSCA. (JP 1-02)

force protection

Preventive measures taken to mitigate hostile actions against Department of Defense personnel (to include family members), resources, facilities, and critical information. Force protection does not include actions to defeat the enemy or protect against accidents, weather, or disease. Also called FP. (JP 1-02)

homeland

The physical region that includes the continental United States, Alaska, Hawaii, United States possessions and territories, and surrounding territorial waters and airspace. (JP 1-02)

homeland defense

The protection of United States sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression or other threats as directed by the President. Also called HD. (JP 1-02)

homeland defense activity

An activity undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States. (Title 32 U.S. Code, § 901)

homeland security

A concerted national effort to prevent terrorist attacks within the United States; reduce America's vulnerability to terrorism, major disasters, and other emergencies; and minimize the damage and recover from attacks, major disasters, and other emergencies that occur. Also called HS. (JP 1-02)

key resources

Publicly or privately controlled resources essential to the minimal operations of the economy and government. (Public Law 107-296)

law enforcement

Activity directed toward the preservation of public order and safety, including protection of persons and property (real and other) in accordance with a statutory authority. Includes efforts as authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for any violation of law, and has statutory powers of arrest. (Derived from statutory definitions of law enforcement officer, see e.g., Title 42 U.S. Code, § 3796b and Title 18 U.S. Code, § 926)

law enforcement agency

Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce US laws in the following jurisdictions: The United States, a state (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation. Also called LEA. (JP 1-02)

mission assurance

A process to ensure that assigned tasks or duties can be performed in accordance with the intended purpose or plan. It is a summation of the activities and measures taken to ensure that required capabilities and all supporting infrastructures are available to the DOD to carry out the National Military Strategy. It links numerous risk management program activities and security related functions—such as force protection; antiterrorism; critical infrastructure protection; information assurance; continuity of operations; chemical, biological, radiological, nuclear, and high-explosive defense; readiness; and installation preparedness—to create the synergistic effect required for DOD to mobilize, deploy, support, and sustain military operations throughout the continuum of operations. (DODD 3020.40) See also National Guard mission assurance below.

National Guard

The Army National Guard and the Air National Guard. (Title 10 U.S. Code, § 101)

National Guard mission assurance

Activities and measures taken to ensure that required capabilities and supporting infrastructures are available to carry out state and federal plans and strategies. Mission assurance encompasses numerous risk and vulnerability assessment programs and security related functions that identify and mitigate risks, protect critical resources, and ensure that National Guard forces can respond to domestic incidents. (Derived from DODD 3020.40)

National Guard civil support

Support provided by the National Guard of the several states while in state active duty status or Title 32 duty status to civil authorities for domestic emergencies, and for designated law enforcement and other activities. Also called NGCS. (NGR 500-1)

National Guard domestic operations

The training, planning, preparing, and operating of National Guard units and forces conducted in the Homeland. Also called NGDO. (NGR 500-1)

national special security event

A designated event that, by virtue of its political, economic, social, or religious significance, may be the target of terrorism or other criminal activity. Also called NSSE. (JP 3-28)

nonlethal weapon

A weapon that is explicitly designed and primarily employed so as to incapacitate personnel or materiel, while minimizing fatalities, permanent injury to personnel, and undesired damage to property and the environment. Also called NLW. (JP 1-02)

physical security

That part of security concerned with physical measures designed to safeguard personnel; to prevent unauthorized access to equipment, installations, material, and documents; and to safeguard them against espionage, sabotage, damage, and theft. (JP 1-02)

rules for the use of force

Directives issued to guide military forces on the use of force during various operations. These directives may take the form of execute orders, deployment orders, memoranda of agreement, or plans. Also called RUF. (JP 1-02)

several states

The 50 states, Commonwealth of Puerto Rico, Guam, the District of Columbia, and the Virgin Islands. (AR 130-5/AFMD 10)

special events assessment rating

A Department of Homeland Security Office of Operations Coordination effort to provide a single Federal interagency resource to assess and categorize the risk to domestic special events that do not rise to the level of a National Special Security Event. Also called SEAR. (DHS Risk Lexicon)

U.S. person

For intelligence purposes, a U.S. person is defined as one of the following: (1) a U.S. citizen; (2) an alien known by the intelligence agency concerned to be a permanent resident alien; (3) an unincorporated association substantially composed of U.S. citizens or permanent resident aliens; or (4) a corporation incorporated in the United States, except for those directed and controlled by a foreign government or governments. (JP 1-02)

weapons of mass destruction

Weapons that are capable of a high order of destruction and/or of being used in such a manner as to destroy large numbers of people. Weapons of mass destruction can be high-yield explosives or nuclear, biological, chemical, or radiological weapons, but exclude the means of transporting or propelling the weapon where such means is a separable and divisible part of the weapon. Also called WMD. (JP 1-02)

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NGR 500-5/ANGI 10-208

weapons of mass destruction – civil support team

Joint National Guard (Army National Guard and Air National Guard) team established to deploy rapidly to assist a local incident commander in determining the nature and extent of a weapons of mass destruction attack or incident; provide expert technical advice on weapons of mass destruction response operations; and help identify and support the arrival of follow-on state and federal military response assets. Also called WMD-CST. (JP 1-02)