

**2024**  
**Domestic Operations**  
**Law and Policy**



**National Guard Bureau**  
**Office of the General Counsel**

**Third Edition**

**2024**

**Domestic Operations**

**Law and Policy**

**National Guard Bureau**

**Office of the General Counsel**



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**JUN 18 2024**

**MEMORANDUM FOR DEPARTMENT OF DEFENSE AND NATIONAL GUARD JUDGE  
ADVOCATES, CIVILIAN ATTORNEYS, AND PARALEGALS**

**Subject: 2024 Domestic Operations Law and Policy**

1. This third edition of the Domestic Operations Law and Policy Manual is informed by our collective experiences and observations advising on numerous complex incidents over the last several years, including a global pandemic and nationwide civil disturbance and unrest. Those overlapping incidents continued to highlight the criticality of whole of government response efforts and the need for coordinated legal counsel during crisis management. Accordingly, this publication seeks to facilitate communication, collaboration, and coordination among National Guard legal personnel by providing a common reference for common issues arising from domestic operations. As in previous editions, it provides a framework for approaching such issues along with statutory and regulatory citations for further in-depth research and analysis.
2. The National Guard Bureau Office of the General Counsel is always learning from National Guard operations and seeks to digest the resulting lessons into key concepts that can be used during future incidents. We strive to keep this publication updated to help ensure that the best legal counsel is available to our clients and that we can provide reliable and timely support to our mission partners and fellow citizens. To that end, we kindly request your feedback to make this product as beneficial as possible for those who have, or will provide, legal counsel and support for domestic operations.
3. Point of contact is LTC Brandon Rowland; NGB-GC; 703-601-7847.

A handwritten signature in black ink, appearing to read "C. Young", is positioned above the typed name of the General Counsel.

CHARLES L. YOUNG, III  
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## Table of Contents

1. Purpose of the National Guard.....	7
2. The National Response Framework.....	9
Overview of the National Preparedness System.....	9
What is the National Preparedness System.....	9
Overview of the National Response Framework.....	11
The Stafford Act.....	14
NGB All Hazards Support Plan.....	16
3. Immediate Response Authority.....	17
Immediate Response Authority.....	17
IRA Past 72 Hours.....	20
IRA – Use of AGRs.....	21
4. Defense Support of Civil Authorities.....	39
DSCA Support Framework (CARRLL Factors).....	39
Dual Status Commander.....	44
Posse Comitatus Act.....	46
Insurrection Act.....	48
5. Status.....	49
State Active Duty.....	49
Title 32 – IDT/AT Duty.....	51
Title 32 – 502(f) (FTNGD-OS 502(f) Status).....	53
Title 10.....	55
State Defense Forces.....	57
6. NGB Role and Capability.....	59
CNGB Responsibilities.....	59
National Guard Bureau Joint Operations Center (NGCC) and Adaptive Battle Staff (ABS).....	61
Joint Liaison Teams (JLT).....	63
CBRN Response Enterprise.....	65
Weapons of Mass Destruction-Civil Support Teams.....	67
NG Homeland Defense and Homeland Security Activities.....	69
Continuity of Operations.....	71
7. The Adjutants General DSCA Responsibilities.....	72
District of Columbia National Guard.....	73

8. Rules for the Use of Force .....	76
NG Domestic Operations Rules for Use of Force.....	76
Non-Lethal Weapon Sets .....	78
9. Contracts and Fiscal Law .....	80
USPFOs Responsibilities .....	80
Fundamentals of Fiscal Law .....	82
Fundamentals of Contract Law .....	83
Use of Federal Arms .....	86
Use of Durable Property .....	88
Tactical & Non-Tactical Vehicles.....	91
10. MILAIR .....	93
Reimbursable Use of ARNG Aircraft.....	93
Reimbursable Use of ANG Aircraft.....	96
11. Military Aircraft Passenger Eligibility.....	99
Flyovers and Aerial Demonstration .....	101
12. NG Support to Fire Fighting .....	103
13. Privacy Act.....	105
Privacy Act of 1974 and Personally Identifiable Information Breaches.....	105
14. FOIA .....	108
Freedom of Information Act .....	108
15. National Guard Intelligence Activities .....	110
National Guard Intelligence Oversight .....	113
State National Guard Domestic Imagery .....	115
16. Medical Licensing.....	125
Quarantine.....	127
Immunizations.....	129
Public Health Emergency .....	131
17. Cyberspace Activities in the National Guard.....	134

## Information Papers

IP – Space-A Transport for Unaccompanied NG Dependents.....	155
IP – Use of NG Title 5 Civilian Directors of Psychological Health Personnel in Domestic Operations..	157
IP – Transport of Pets and Service Animals on MILAIR .....	159
IP – Transport of Donated Goods on MILAIR .....	161
IP – Use of a MEDEVAC Aircraft .....	163
IP – IAA and Counterdrug Personnel .....	165
IP – NG Support to USNORTHCOM.....	167
IP – National Guard Weapon Authorities .....	170

Domestic Operations Law and Policy

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## 1. Purpose of the National Guard

Topic: What is the purpose of the National Guard?

The terms Army National Guard of the United States (ARNGUS) and Air National Guard of the United States (ANGUS) refer to the National Guard as a Reserve Component (RC) of their respective military service. All of the members of the ARNGUS are members of the Army National Guard. All of the members of the ANGUS are members of the Air National Guard.

In its RC capacity, the purpose of the National Guard is to provide trained units and qualified persons available for active duty in the armed forces, in time of war or national emergency, and at such other times as the national security may require, to fill the needs of the armed forces whenever more units and persons are needed than are in the regular components.

The discipline, including training, of the Army National Guard shall conform to that of the Army. The discipline, including training, of the Air National Guard shall conform to that of the Air Force. The training of the National Guard shall be conducted by the several States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands in conformity with Title 32, United States Code.

### Discussion

Appropriated funds may only be used for the purpose for which the appropriations were made, except as otherwise provided by law. Generally, the National Guard is funded by Congress to train for, but not conduct, the federal warfighting mission by federal training dollars under 32 U.S.C. § 502(a). National Guard personnel in a Title 32 duty status receive training pursuant to assignments and required readiness levels. National Guard training requirements for a unit's Federally assigned mission are determined and set by the Services.

Required training will provide for the minimum training time or number of training periods required for attaining the prescribed unit readiness status and maintaining individual proficiency. The primary purpose of all training is the enhancement of individual skills and unit effectiveness. Inactive Duty Training (IDT) and annual training are conducted under 32 U.S.C. § 502(a) within an existing published training plan. Training plans must be IAW NGR 350-1 and ANGI 36-2001 and detail how the Title 32 training will meet the training set out by the Services.

The United States Property and Fiscal Officer (USPFO) for each State ensures federal funds and property are used appropriately. The NG A3 / NG G3 training managers for each State and NGB J3 ensure training plans address mission essential tasks (METs) and core wartime tasks in Career Field Education and Training Plans.

The NG is prohibited from using its appropriations in support of activities not authorized for the NG. The NG is also prohibited from augmenting other agencies who have been given appropriated funds for their missions.



Key References:

- a) 10 U.S.C. § 10102, Purpose of reserve components
- b) 32 U.S.C. Chapter 5 – Training
- c) ANGI 36-2001, Management of Training and Operational Support Within the Air National Guard, 30 April 2019
- d) NGR 350-1, Army National Guard Training, 23 June 2021

## 2. The National Response Framework

### Overview of the National Preparedness System

Topic: What is the National Preparedness System (NPS)?

The NPS is the integrated set of guidance, programs, and processes that enables the Nation to meet the national preparedness goal. In 2011, Presidential Policy Directive 8 required DHS to develop: (1) a “national preparedness goal,” and (2) a “national preparedness system” to achieve that goal. DHS, through FEMA, created the national preparedness system which sets out national planning frameworks covering prevention, protection, mitigation, response, and recovery:

Prevention refers to those capabilities necessary to avoid, prevent, or stop a threatened or actual act of terrorism. Prevention capabilities include, but are not limited to, information sharing and warning, domestic counterterrorism, and preventing the acquisition or use of weapons of mass destruction. For purposes of the prevention framework, the term "prevention" refers to preventing imminent threats.

Protection refers to those capabilities necessary to secure the homeland against acts of terrorism and manmade or natural disasters. Protection capabilities include, but are not limited to, defense against WMD threats, defense of agriculture and food, critical infrastructure protection, protection of key leadership and events, border security, maritime security, transportation security, immigration security, and cybersecurity.

Mitigation refers to those capabilities necessary to reduce loss of life and property by lessening the impact of disasters. Mitigation capabilities include, but are not limited to, community-wide risk reduction projects, efforts to improve the resilience of critical infrastructure and key resource lifelines, risk reduction for specific vulnerabilities from natural hazards or acts of terrorism, and initiatives to reduce future risks after a disaster has occurred.

Response refers to those capabilities necessary to save lives, protect property and the environment, and meet basic human needs after an incident has occurred. Response activities take place immediately before, during, and in the first few days after a major or catastrophic disaster.

Recovery refers to those capabilities necessary to assist communities affected by an incident to recover effectively, including, but not limited to, rebuilding infrastructure systems, providing adequate interim and long-term housing for survivors, restoring health/social/community services, promoting economic development, and restoring natural and cultural resources.

### Discussion

The NPS outlines an organized process for the “whole community” to move forward with their preparedness activities and achieve the National Preparedness Goal. This is done by identifying and assessing risk, estimating capability requirements, building and sustaining capabilities, planning to deliver capabilities, validating capabilities, and reviewing and updating all capabilities, resources, and plans.

The NPS uses the National Incident Management System (NIMS) to guide all levels of government, nongovernmental organizations, and the private sector to work together to prevent, protect against, mitigate, respond to, and recover from incidents. NIMS provides stakeholders across the whole community with the shared vocabulary, systems, and processes to successfully deliver the capabilities described in the NPS. NIMS defines operational systems, including the Incident Command System (ICS), Emergency Operations Center (EOC) structures, and Multiagency Coordination Groups (MAC Groups) that guide how personnel work together during incidents. NIMS applies to all incidents, from traffic accidents to major disasters, including preplanned events. Currently the NG Emergency Management Program implements the National Preparedness Frameworks and the National Preparedness System as appropriate, including the National Incident Management System, Incident Command System, and Multi-Agency Coordination System for the management of emergencies. The Adjutants General, under the authority, direction, and control of their Governors, are encouraged to develop EM plans that address EM capability elements and to provide questions and concerns to the EMSG or directly to the NG EM Program Manager.

#### Key References:

- a) 6 U.S.C. § 314, Authority and responsibilities
- b) 6 U.S.C. § 319, National Integration Center
- c) Presidential Policy Directive 8: National Preparedness, 27 Nov 2022, <https://www.dhs.gov/presidential-policy-directive-8-national-preparedness>
- d) The National Preparedness System, 20 July 2020, <https://www.fema.gov/national-preparedness-system>
- e) The National Incident Management System, 21 March 2024, <https://www.fema.gov/national-incident-management-system>
- f) Federal Emergency Management Agency Website: [www.fema.gov](http://www.fema.gov)
- g) CNGBI 3000.04, National Guard Bureau Domestic Operations, 24 January 2018
- h) CNGBI 3204.00, National Guard Emergency Management Program, 19 April 2021

## Overview of the National Response Framework

Topic: What is the National Response Framework (NRF)?

The NRF is a guide to how the Nation ***responds*** to all types of disasters and emergencies. “Response” refers to those capabilities necessary to save lives, protect property and the environment, and meet basic human needs after an incident has occurred. Response activities take place immediately before, during, and in the first few days after a major or catastrophic disaster.

The NRF guides how the Nation responds to all types of disasters and emergencies. It is built on scalable, flexible, and adaptable concepts identified in the National Incident Management System to align key roles and responsibilities.

The NRF is composed of a base document, Emergency Support Function (ESF) Annexes, and Support Annexes. The annexes provide detailed information to assist with the implementation of the NRF. ESF Annexes describe the Federal coordinating structures that group resources and capabilities into functional areas that are most frequently needed in a national response. The ESFs with assigned coordinators are:

- ESF #1 – Transportation (Department of Transportation)
- ESF #2 – Communications (DHS/CISA)
- ESF #3 – Public Works & Engineering (DoD/USACE)
- ESF #4 – Firefighting (USDA/U.S. Forest Service and DHS/FEMA/U.S. Fire Administration)
- ESF #5 – Information & Planning (DHS/FEMA)
- ESF #6 – Mass Care, Emergency Assistance, Temporary Housing, & Human Services (DHS/FEMA)
- ESF #7 – Logistics (GSA and DHS/FEMA)
- ESF #8 – Public Health & Medical Services (HHS)
- ESF #9 – Search and Rescue (DHS/FEMA)
- ESF #10 – Oil & Hazardous Materials Response (EPA)
- ESF #11 – Agriculture & Natural Resources (Department of Agriculture)
- ESF #12 – Energy (DOE)
- ESF #13 – Public Safety & Security (DOJ/Bureau of ATF)
- ESF #14 – Cross-Sector Business and Infrastructure
- ESF #15 – External Affairs (DHS)

The Support Annexes describe other mechanisms by which support is organized among private sector, NGO, and Federal partners. Federal departments and agencies designated as coordinating and cooperating agencies in NRF support annexes conduct a variety of activities to include managing specific functions and missions and providing Federal support within their functional areas:

- Critical Infrastructure and Key Resources
- Financial Management
- International Coordination
- Private-Sector Coordination

- Public Affairs
- Tribal Relations
- Volunteer and Donations Management
- Worker Safety and Health

**State Response.** State governments supplement local efforts before, during, and after incidents by applying in-state resources first. If a state anticipates that its resources may be exceeded, the Governor may request assistance from other states or the Federal Government through a Stafford Act Declaration.

The Governor is responsible for the public safety and welfare of a state's residents. The Governor coordinates state resources and provides the strategic guidance for response to all types of incidents. This includes supporting local governments as needed and coordinating assistance with other states and the Federal Government. A Governor's options in responding include:

- make, amend, or suspend certain orders or regulations associated with response IAW state law
- coordinate assistance through interstate mutual aid and assistance agreements (i.e., EMAC)
- command the state military forces (NG personnel not in Federal service and state militias)

The National Guard is an important state and Federal resource available for planning, preparing, and responding to natural or manmade incidents. National Guard members have expertise in critical areas, such as emergency medical response, communications, logistics, search and rescue, civil engineering, chemical/biological/radiological/nuclear/explosive (CBRNE) response and planning, and decontamination.

The Governor may activate elements of the National Guard in a State Active Duty (SAD) status to support state domestic civil support functions and activities. The state adjutant general may assign members of the Guard to assist with state, regional, and Federal civil support plans.

**Federal Response.** The Federal Government becomes involved with a response in three primary scenarios: (1) when Federal interests are involved, (2) when state, local, tribal, or territorial resources are overwhelmed and Federal assistance is requested, and/or (3) when authorized or required by statute, regulation, or policy. Accordingly, in some instances, the Federal Government may play a supporting role to state, local, tribal, or territorial authorities by providing Federal assistance to the affected parties. For example, the Federal Government provides assistance to state, local, tribal, and territorial authorities when the President declares a major disaster or emergency under the Stafford Act. The lead federal agency in this instance is the Federal Emergency Management Agency (FEMA). In other instances, the Federal Government may play a leading role in the response where the Federal Government has primary jurisdiction or when incidents occur on Federal property (e.g., National Parks, military bases).

Pursuant to 10 U.S.C. §113, SecDef has authority, direction, and control over the DoD. DoD resources may be committed when requested by another Federal agency and approved by the SecDef, or when directed by the President, through DoD Support to Civil Authorities (DSCA). However certain DoD officials and organizations may provide support under the immediate

response authority, a mutual aid agreement with the local community, or pursuant to independent authorities or agreements. When DoD resources are authorized to support civil authorities, command of those personnel remains with the SecDef. National Guard personnel respond to DSCA when federalized, or if SecDef, in coordination with the Governors of the affected states, elects and requests to use those personnel in Title 32 U.S.C., status. DoD elements in the incident area of operations coordinate closely with response organizations at all levels.

**Mission Assignment (MA).** ESFs and the assigned coordinator guide which federal agency has responsibility for the requested assistance. FEMA provides MAs to the Federal Coordinating Officer (FCO) for that ESF. For example, if response and recovery operations require debris removal or sandbagging, then ESF 3 through USACE would be the appropriate ESF deployed.

One example shows the importance of understanding the whole of government response. During hurricane season, DoD received an RFA from a State to transport federal prisoners. DOJ/BOP has inherent responsibility for the management of federal prisoners; as such, this request should have been initially directed to DOJ/BOP to execute their normal functions. This RFA would not be appropriate for a FEMA MA or to be sourced to DoD.

**NGB.** Currently the NG Emergency Management Program implements the National Preparedness Frameworks and the National Preparedness System as appropriate, including the National Incident Management System, Incident Command System, and Multi-Agency Coordination System for the management of emergencies.

#### Key References:

- a) 6 U.S.C. § 314, Authority and responsibilities
- b) 6 U.S.C. § 319, National Integration Center
- c) Presidential Policy Directive 8: National Preparedness:  
<https://www.dhs.gov/presidential-policy-directive-8-national-preparedness>
- d) The National Response Framework, 4<sup>th</sup> edition: <https://www.fema.gov/media-library/assets/documents/117791>
- e) Federal Emergency Management Agency Website: [www.fema.gov](http://www.fema.gov)
- f) CNGBI 3000.04, National Guard Bureau Domestic Operations, 24 January 2018
- g) CNGBI 3204.00 National Guard Emergency Management Program, 19 April 2021

## The Stafford Act

Topic: Under the Stafford Act, what are the standards for assistance for an emergency and major disaster?

### Guidance

The Stafford Act is the statutory authority 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 such disasters.

42 U.S.C. § 5122(1) the Stafford Act defines an “emergency” as any occasion or instance for which, in the determination of the President, federal assistance is needed to supplement State and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part of the United States.

42 U.S.C. § 5122(2) the Stafford Act defines a “major disaster” as any natural catastrophe (including any hurricane, tornado, storm, high water, wind driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, snowstorm, or drought), or, regardless of cause, any fire, flood, or explosion, in any part of the United States, which in the determination of the President, causes damage of sufficient severity and magnitude to warrant major disaster assistance under this Act to supplement the efforts and available resources of States, local governments, and disaster relief organizations in alleviating the damage, loss, hardship, or suffering caused thereby.

### Discussion

If a State anticipates that its resources may be exceeded, the Stafford Act allows the Governor to request assistance from the Federal Government. The Governor of an affected State may request the declaration of a major disaster or emergency, and must demonstrate, as a prerequisite for receiving assistance, both that the state’s response plans have been activated and state and local capabilities are inadequate for effective response. The Federal Government becomes involved with a response when Federal interests are involved; when state, local, tribal, or territorial resources are overwhelmed and Federal assistance is requested; or as authorized or required by statute, regulation, or policy.

FEMA leads and coordinates the Federal response and assistance, but the State remains in control throughout the entire response. FEMA focuses its efforts on managing the consequences of disasters and emergencies and its actions are generally driven by requests from state and local governments. Federal agencies provide resources under FEMA mission assignments or their own authorities. A mission assignment is a work order issued to a Federal agency by someone with delegated Disaster Recovery Manager (DRM) authority, typically the FCO once a JFO is established. This also includes the Regional Administrator or Associate Administrator for the Office of Response and Recovery (ORR) directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

The Federal share for assistance provided shall be equal to not less than 75% of the eligible costs. Major disaster assistance is a more comprehensive grant of federal aid for long-term

consequence management. Emergency assistance is more limited in scope and in time than assistance under a major disaster declaration, and total assistance may not exceed \$5M for a single emergency, unless the President determines there is a continuing and immediate risk to lives, property, public health or safety, and necessary assistance will not otherwise be provided on a timely basis.

Key References:

- a) 42 U.S.C., Chapter 68, Subchapter IV, “Major Disaster Assistance Programs”
- b) 44 C.F.R. Part 206, “Federal Disaster Assistance”
- c) Domestic Operational Law Handbook, Center for Law and Military Operations (CLAMO), The Judge Advocate General’s Legal Center and School, 2021



## NGB All Hazards Support Plan

Topic: What is the NGB All Hazards Support Plan (AHSP)?

The NGB AHSP addresses natural disasters, man-made disasters, and industrial accidents and is nested under PPD-8. It leverages expertise, planning, and authorities to enhance the effectiveness of State domestic All-Hazard responses in two primary areas:

- (1) Supporting the directed All-Hazard response of Governors and TAGs through collective, inter-state mutual aid and through the Emergency Management Assistance Compact; and
- (2) Executing response operations in support of State requirements pursuant to Title 32 and Federal requirements pursuant to Title 10.

CNGB assists SecDef in facilitating and coordinating with the USNORTHCOM, USINDOPACOM, other Federal agencies, and TAGs for the use of NG personnel and resources for missions conducted under State control. NGB coordinates with USNORTHCOM, USINDOPACOM, and the NG JFHQs-State to facilitate the integration and synchronization of Homeland Defense (HD) and Defense Support of Civil Authorities (DSCA)/NG Civil Support and associated planning.

### Discussion

NGB involvement is only a small part of an overall disaster response. The majority of the assistance (personnel, equipment, commodities, and resources) is provided at the state and local level. The scale and the intensity of an event determines the level of involvement and response from the Federal government.

If NG personnel and resources are requested, it is important to review the AHSP to understand the phases of NG involvement pre-incident, during incident response, and post-incident. The NGB does not possess legal authority or SecDef direction for command and control beyond its assigned staff. The NGB uses its existing organizational authorities to support State-level operations at National Guard Joint Force Headquarters-State (NG JFHQs-State) request.

The AHSP also lines up NG core capabilities with the Emergency Support Functions (ESF) from the National Response Framework. It contains responsibilities of each J-staff during an incident and contains annexes for operations for different types of incidents (for example, earthquake, hurricane, improvised nuclear device, flood).

Key References:

- a) NGB Natural Hazards Playbook
- b) CNGBI 5200.01, National Guard Bureau All Hazards Support Plan (AHSP), 3 February 2017
- c) CNGBI 3000.04, National Guard Bureau Domestic Operations, 24 January 2018

### 3. Immediate Response Authority Immediate Response Authority (IRA)

Topic: What is IRA and how is the authority used?

#### Guidance

DoDD 3025.18, Defense Support of Civil Authorities (DSCA) provides guidance and conditions on when military resources may be used to provide support to civilian authorities. It applies to, among other entities, the NG when under Federal command and control (Title 10) and to NG personnel when SecDef determines that it is appropriate to employ NG in Title 32 to fulfill a request for DSCA, SecDef requests the concurrence of the Governors of the affected States, and those Governors concur in the employment of NG personnel in such a status. All requests from civil authorities and qualifying entities for assistance shall be evaluated under the “CARRLL” factors:

- (1) Legality (compliance with laws).
- (2) Lethality (potential use of lethal force by or against DoD personnel).
- (3) Risk (safety of DoD personnel).
- (4) Cost (including the source of funding and the effect on the DoD budget).
- (5) Appropriateness (whether providing the support is in the interest of the Department).
- (6) Readiness (impact on the Department of Defense’s primary missions).

DoDD 3025.18 also authorizes IRA in response to a request for assistance from a civilian authority. IRA is a form of DSCA that allows DoD officials (federal military commanders) to provide an immediate response, in response to a request for assistance from a civil authority, under imminently serious conditions **and if time does not permit approval from higher authority**, to temporarily employ the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States.

An immediate response shall end when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources available from State, local, and other Federal agencies to respond adequately and that agency or department has initiated response activities) or when the initiating DoD official or a higher authority directs an end to the response. The DoD official directing a response under IRA shall reassess whether there remains a necessity for the DoD to respond under this authority as soon as practicable but, if immediate response activities have not yet ended, not later than 72 hours after the request for assistance was received.

Para 4.i(6). -Support provided under immediate response authority should be provided on a cost-reimbursable basis, where appropriate or legally required, but will not be delayed or denied based on the inability or unwillingness of the requester to make a commitment to reimburse DoD.

Para. 4.j. The authority of State officials is recognized to direct a State immediate response using National Guard personnel under State command and control (including personnel in a title 32, U.S.C. status in accordance with State law, but National Guard personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities.

## Discussion

IRA is a successful tool to fill the gap of providing initial response between the flashpoint of an unforeseen circumstance and the marshalling of force/capabilities through other mechanisms such as SAD or FTNGD under 32 U.S.C. § 502(f). IRA is limited to actions taken in response to a request from civil authorities designed to save lives, prevent human suffering, or mitigate great property damage. IRA may only be exercised with personnel on-hand at the time of incident; personnel may not be brought on to duty for IRA, nor is IRA a tool for sourcing preplanned requirements. Federal IRA is not appropriate for Law Enforcement Agency (LEA) assistance or civil disturbances that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory. DoDM 3025.01 volumes have comprehensive guidance for IRA, lists key authorities, and cites the DSCA EXORD as the direction and guidance for conducting and reporting IRA activities.

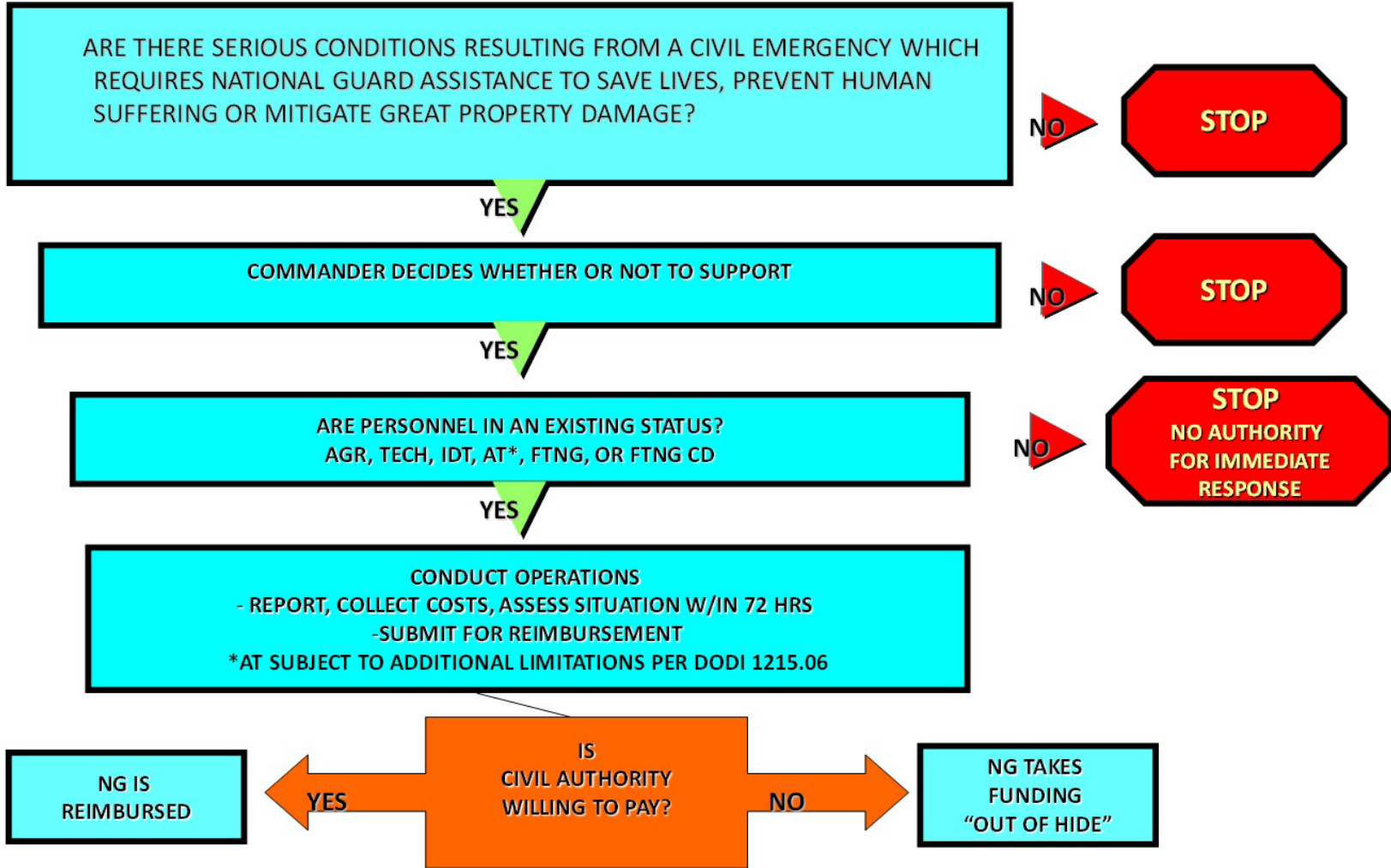
**State Immediate Response is a function of applicable state law and is separate and distinct from “federal” IRA as defined within DoDD 3015.18.** State Immediate Response is a function of state law and policy; however, DoDD 3015.18 restricts the use of Title 32 to personnel in said status at the time of the response. Aside from this limitation, the criteria and other restrictions within DoDD 3015.18 do not apply to State Immediate Response.

### Key References:

- a) 32 Code of Federal Regulations Part 185,
- b) DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 29 December 2010
- c) DoDI 3025.22, *The Use of the National Guard for Defense Support of Civil Authorities*, 15 May 2017
- d) DoDM 3025.01 series, 13 April 2017
- e) CJCS DSCA EXORD, 301600Z, July 2019

# IMMEDIATE RESPONSE AUTHORITY

## REQUEST FOR ASSISTANCE MADE BY CIVIL AUTHORITIES



### IRA Past 72 Hours

Topic: What actions should be taken when sufficient alternative personnel and capabilities cannot be brought to respond adequately and further IRA is required after the initial 72 hours?

#### Guidance

DoDD 3025.18, Para 4.i. requires that an immediate response shall end when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources available from State, local, and other Federal agencies to respond adequately and that agency or department has initiated response activities) or when the initiating DoD official or a higher authority directs an end to the response. The DoD official directing a response under IRA shall reassess whether there remains a necessity for the DoD to respond under this authority as soon as practicable but, if immediate response activities have not yet ended, not later than 72 hours after the request for assistance was received.

Para 4.j. recognizes authority of State officials to direct a State immediate response using NG personnel under State command and control (including personnel in Title 32 status) IAW State law, but NG personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities.

#### Discussion

When serving in an authorized Title 32 status, the NG may exercise IRA to save lives, prevent human suffering, or mitigate great property damage IAW DoDD 3025.18 (immediate response doctrine). There is no requirement to *automatically* terminate IRA 72 hours after a crisis assistance request from civil authorities. However, under DoDD 3025.18 there exists a requirement to “reassess” whether a necessity for those personnel exist at 72 hours. Any justification for continued IRA should be articulable, reasonable, and supported by the facts.

Note: the 72-hour evaluation criteria does not apply to State Immediate Response

#### Key Reference:

- a) DoDD 3025.18, Defense Support of Civil Authorities, 29 December 2010

## IRA – Use of AGRs

Topic: During Immediate Response Activities, what actions may be taken by Active Guard Reserve (AGR) personnel?

### Guidance

DoDD 3025.18, Para 4.i. gives Federal military commanders IRA to respond to requests for assistance from a civil authority, under imminently serious conditions, and, if time does not permit approval from higher authority, to temporarily employ the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States.

Para 4.j. recognizes authority of State officials to direct a State immediate response using NG personnel under State command and control (including personnel in Title 32 status) IAW State law, but NG personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities.

IAW 32 U.S.C. § 328(b), AGRs may perform the additional duties specified in 32 U.S.C. § 502(f)(2) to the extent that the performance of those duties does not interfere with the performance of the member's primary AGR's duties of organizing, administering, recruiting, instructing, and training the reserve components.

### Discussion

AGRs can respond under IRA on a non-interference basis. AGRs should be replaced by traditional Guardsman (DSG or M-Day) and transitioned back to their primary statutory duties as soon as possible. AGR personnel may perform duties in support of IRA in the following four instances:

- Primary AGR duties. Pursuant to NGR 600-5, para 3-4, when a unit is ordered to operational 32 USC § 502(f) status or State Active Duty status to support an emergency situation, its AGR members may accompany the unit and continue to perform their normal AGR duties. The term “active Guard and Reserve duty” is defined in 10 U.S.C. § 101(d)(6)(A). See also ANGI 36-101, para 7.10.1.1., in regards to the use of AGR Airmen.
- Other than primary duties on a non-interference basis. Pursuant to 32 U.S.C. § 328(b), AGR personnel may be ordered to perform additional duties as specified in 32 U.S.C. § 502(f)(2) to the extent that performance of those duties does not interfere with the member's primary AGR duties of “organizing, administering, recruiting, instruction, and training the reserve components.” Consider the following factors: (1) the nature of the duty as compared to an AGR primary duties (the more closely related, the more likely it is appropriate for AGRs); (2) the timing of the duty; (3) the location of the duty; (4) the

duration of the duty; and (5) the extent of the duty (for e.g. if the duty is integral to the operation or involves training/preparation, the duty is less likely appropriate for AGRs).

- Statutory exceptions. AGRs may perform other duties when specifically authorized by statute in response to specific emergency domestic situations, such as in the case of Civil Support Teams. See NGR 600-5, para. 3-4c and ANGI 36-101, para. 7.10.1.6.
- Immediate Response Authority (IRA). AGR personnel may support an immediate response situation under IRA, as defined in DoDD 3025.18, on a non-interference basis. For e.g., ANGI 36-101, para 7.10.2.1, provides that AGR Airman may support an “Immediate Response” situation. Paragraph 7.10.2.2. provides that a reassessment shall occur NLT 72 hours after AGRs are employed in immediate response if such activities have not yet ended, and para 7.10.2.3 states that “maximum efforts must be made to replace AGR Airmen with traditional guardsmen in an appropriate duty status in immediate response situations.” CNGBI 1302.01 requires CNGB approval for AGRs to perform IR for more than 72 hours.

#### Key References:

- a) 32 U.S.C. § 328, Active Guard and Reserve Duty (Governor’s Authority)
- b) DoDD 3025.18, Defense Support of Civil Authorities, 29 December 2010
- c) NGR 600-5, The AGR Program Title 32 Full-Time National Guard Management, 12 May 2023
- d) ANGI 36-101, Air National Guard Active Guard Reserve (AGR) Program, 21 April 2022

## IRA – Use of Technicians and Title 5 National Guard Civilian Employees

Topic: During Immediate Response Activities, what actions may be taken by Technician personnel and National Guard Civilian Employees?

### Guidance

DoDD 3025.18, Para 4.i. gives Federal military commanders IRA in response to a request for assistance from a civil authority, under imminently serious conditions, and, if time does not permit approval from higher authority, to temporarily employ the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States.

Para 4.j. recognizes authority of State officials to direct a State immediate response using NG personnel under State command and control (including personnel in Title 32 status) IAW State law, but NG personnel will not be placed in or extended in Title 32 status to conduct State immediate response activities.

NG technicians are statutorily limited in the functions they can perform. Their primary functions are to organize, administer, instruct, and train the National Guard of their State. They may also perform certain specified additional duties to the extent that the performance of those additional duties does not interfere with the performance of their (primary technician) duties.

The Title 5 National Guard civilian employees performing duty with State National Guards are not similarly limited to the functions they may perform. By statute, they may be utilized to “execute the missions of the National Guard.” By DoD policy, CNGB, in coordination with the Adjutant General, may designate them as “essential personnel.” Designation permits the Title 5 employee to be assigned to duty in preparation for, or in response to, a state emergency or disaster declaration. Designations are time limited to 14 days unless approved otherwise in advance by CNGB.

### Discussion

Technicians may respond under IRA when acting under the control of TAG on a non-interference basis. Technicians may perform properly directed IRA activities; however, based on the standards of the TPRs and CNGBIs, technicians should be brought onto SAD as soon as possible.

Title 5 NG civilian employees who are not designated as “essential personnel” may perform properly directed IRA activities within the limitations of their position description; or within the limitations of “other duties as assigned” if such terminology is included in their existing position description. Utilization of personnel in this manner should be strictly limited to the immediate time period after state emergency or disaster declaration.

Designated Title 5 National Guard civilian employees may be used, within the time limits of the designation, to prepare for and in response to a state emergency or disaster declaration. The duties assigned under such designation must be within the limitations of their position



description; or within the limitations of “other duties as assigned” if such terminology is included in their existing position description.

Consult with the full-time SJAs for use of technician personnel and Title 5 National Guard civilian employees who are covered by a collective bargaining agreement. Be advised that there is usually an ‘emergency exception’ to most collective bargaining agreements, and if not contained therein labor law may still provide a way ahead.

Key References:

- a) 10 U.S.C. § 10508, *National Guard Bureau, General Provisions*
- b) 32 U.S.C. § 709, *Technicians: Employment, Use, Status*
- c) DoDD 3025.18, *Defense Support of Civil Authorities*, 19 March 2018
- d) Memorandum, *Office of the Assistant Secretary of Defense, Manpower and Reserve Affairs: Guidance to Convert Dual Status and Non-Dual Status Military Technician Positions*, April 20, 2017

## IRA – Use of Counterdrug (CD) Personnel

### Guidance

Topic: During Immediate Response Activities, what actions may be taken by CD personnel? DoDD 3025.18, Para 4.i. indicates Federal military commanders have immediate response authority (IRA) as described herein. In response to a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority, commanders may provide an immediate response by temporarily employing the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States. Immediate response authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory.

DoDD 3025.18, Para 4.j. recognizes authority of State officials to direct a State immediate response using NG personnel under State command and control (including personnel in Title 32 status) IAW State law, but NG personnel will not be placed in or extended in Title 32 status to conduct State IR activities.

CD personnel serve in a 32 U.S.C § 502(f) status on FTNGD-CD (OS) orders and are funded and operate under the statutory authority of 32 U.S.C § 112 to (1) perform duties for the primary purpose of carrying out drug interdiction and counter-drug activities pursuant to a SecDef approved State drug and interdiction and counter-drug activities plan and (2) participate in training required under 32 U.S.C. § 502(a) in order to maintain their military skills (e.g., attend IDT and AT). CD funding (and CD-funded equipment, including aircraft and vehicles) must only be used for CD purposes pursuant to 32 U.S.C. § 112, and set forth in an appropriately approved State Plan.

CNGBI 3100.01B limits CD personnel in a Title 32 status to the following domestic CD Mission Categories: Program Management, Linguist and Transcription Services, Investigative Case and Analysis Support, Communications Support, Engineer Support, Diver Support, Transportation Support, Training, Reconnaissance, Civil Operations, State-to-State Support, New Initiatives, and Counter-Threat Finance (CTF).

However, on an occasional basis CD personnel and equipment may be used for non-CD missions under the following conditions: (1) the personnel and/or equipment are needed to search for a lost person(s), where without this support a high probability exists that the person(s) will not survive, (2) the personnel and/or equipment are needed to search for escapees or suspected dangerous felons, who, if not quickly apprehended, will likely endanger the welfare of innocent persons, or (3) the personnel and/or equipment are needed for support of contingency operations, natural disasters, Defense Support to Civilian Authorities, and a National Special Security Event (NSSE). Requests must be made to the State Director of Joint Staff (DJS) by a LEA, Office of Emergency Services, or their equivalent. Support provided under IRA (except search and rescue) should be provided on a cost-reimbursable basis but will

not be delayed or denied based on the inability or unwillingness of the requester to make a commitment to reimburse the NG. The State DJS must request reimbursement for all applicable costs (e.g., flying hour costs, vehicle costs, fuel costs, and personnel costs) from the agency making the request for support. DJSs will ensure that all available alternate sources of support are considered as possible alternatives to the use of CD assets prior to the use of CD assets. CDCs will ensure that use of CD assets for IR does not interfere with CD operations except in valid life/death emergency situations.

## Discussion

CD personnel should not be used for any purpose other than for the performance of duty related to the domestic CD mission categories in their State's SecDef-approved State Plan. However, under the rarest of circumstances, CD personnel can respond under IRA on an "on occasion" basis for limited IRA activities as listed above. The State DJS must review an RFA to use CD personnel and/or equipment for IR and, prior to such use, must ensure all available alternate sources of support are considered as possible alternatives to the use of CD assets even if CD personnel have additional non-CD related skills, such as language translation.

NGB J32 does not have authority to make an IR determination for CD personnel. Generally, the IRA determination is decided by the State NG leadership. IRA requests and notifications flow from the State J3/G3/A3 to the NGCC to the NGB J3/4/7 to the Deputy Assistant Secretary of Defense for Counternarcotics and Stabilization Policy (DASD(CN&SP)) and should be ceased or replaced with non-CD assets as soon as possible but not later than 72 hours, or such time as OSD directs that it cease. See CNGBI 1302.01 on authority to order members to perform duty under 32 U.S.C. § 502(f) to respond to a RFA pursuant to IRA.

### Key References:

- a) 32 U.S.C. § 112, National Guard Drug Interdiction and Counter-Drug Activities
- b) 32 U.S.C. § 502, Required Drills and Field Exercises
- c) DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 29 December 2010
- d) CNGBI 1302.01, *Guidance for Members Performing Duty Under the Authority of 32 U.S.C. §502(f)*, 23 April 2012, Certified as current 12 July 2017
- e) CNGBI 3100.01B, *National Guard Counter-Drug Support*, 6 March 2020

## 4. Mutual Aid and Assistance Agreements

### Guidance

Mutual aid agreements and assistance agreements are agreements between agencies, organizations, and jurisdictions that provide an assistance mechanism to quickly obtain emergency assistance in the form of personnel, equipment, materials, and other associated services. A mutual aid agreement is a tool to use that can enhance resources during a high-demand incident. Mutual aid agreements establish the terms under which one party provides resources to another party. There are several types of these kinds of agreements, including but not limited to the following:

**Local Automatic Mutual Aid:** Agreements that permit the automatic dispatch and response of requested resources without incident-specific approvals or consideration of entity boundaries. These agreements are usually basic contracts between or among neighboring local entities and are used under conditions when time is of the essence to save lives, prevent human suffering, or mitigate property damage following an incident.

**Local Mutual Aid:** Agreements between neighboring jurisdictions or organizations that involve a formal request for assistance and generally cover a larger geographic area than automatic mutual aid.

**Regional Mutual Aid:** Sub-state regional mutual aid agreements between multiple jurisdictions that are often sponsored by a council of governments or a similar regional body.

**Statewide/Intrastate Mutual Aid:** Agreements, often coordinated through the State that incorporate both State and local governmental and nongovernmental resources in an attempt to increase preparedness statewide.

**Interstate Agreements:** Out-of-State assistance through the EMAC or other formal State-to-State agreements that support the response effort.

**International Agreements:** Agreements between the United States and other nations for the exchange of assets in an emergency.

**Other Agreements:** Any agreement, whether formal or informal, used to request or provide assistance and/or resources among jurisdictions at any level of government (including foreign), NGOs, or the private sector.

### Discussion

The primary objective of mutual aid and assistance agreements is to facilitate rapid, short-term deployment of emergency support prior to, during, or after an incident. A signed agreement does not obligate the provision or receipt of aid, but rather provides a tool for use should the incident dictate a need. Jurisdictions should be party to agreements with the appropriate jurisdictions and/or organizations (including NGOs and the private sector, where appropriate) from which they expect to receive, or to which they expect to provide, certain assistance. States should participate in interstate compacts and look to establish intrastate agreements that encompass all local jurisdictions. Authorized officials from each of the participating jurisdictions and/or organizations should collectively approve all mutual aid agreements and assistance agreements.

MOUs and MOAs are needed with the private sector and NGOs, including community-based, faith-based, and national organizations such as the American Red Cross and the Salvation Army, to facilitate the timely delivery of assistance during incidents.

Agreements should be in written form and should address the following elements to improve the understanding of the commitment, scope, and general procedures for all parties to the agreement: purpose and scope; benefits; authorities; definitions; governance structure and operations oversight; recognition of licensure certifications; protocols for interoperable communications; tort liability and indemnification; insurance; workers' compensation; deployment notification; reciprocity/reimbursement; termination; dispute resolution; modification and amendment management; operational plan and procedures requirements; and supplement information based on declaration status.

A prior written mutual aid and assistance agreement does not need to be in place prior to rendering assistance. States can enter into mutual aid and assistance agreements as needed to aid a fellow state. Liability, reimbursement, license reciprocity, workers' compensation, and any expectations of deployment, use, and redeployment of State personnel and assets should be captured in the agreement.

The provision of assistance to another State, territory, or the District of Columbia using personnel under an authorization for the use of National Guard to perform duty under 32 U.S.C. § 502(f) does not need a mutual aid or assistance agreement.

Key References:

- a) Federal Emergency Management Agency Website: [www.fema.gov](http://www.fema.gov)
- b) 32 U.S.C. § 502(f), Required Drills and Field Exercises

## Emergency Management Assistance Compact (EMAC)

### Guidance

The EMAC is a nationally adopted state-to-state mutual aid and assistance agreement that facilitates the sharing of resources across state lines during times of emergency or disaster. The EMAC is implemented and executed by the state emergency management agencies on behalf of the Governors and was ratified by the U.S. Congress in 1996 through Public Law 104-321.

EMAC includes immunity and tort liability protection to incentivize their use. It works in harmony with the National Response Framework and serves as the primary resource provider when federal support is not warranted. EMAC legislation is comprised of the following thirteen Articles of Agreement:

Article I requires states to declare a state of emergency to implement EMAC during an event.

Article II designates the state emergency management agencies as responsible for implementing EMAC on behalf of their Governor.

Article III lists responsibilities of the states to formulate procedural plans and programs for interstate cooperation. It also describes how a State makes a request for assistance under EMAC.

Article IV identifies the limitations of support. If a state is facing a disaster themselves, they do not have to provide support. Deployed resources can be recalled during a disaster if they are needed to protect their home state. Further, personnel deployed are under the command and control of their home state but under operational control of the receiving state. While deployed, personnel are granted the same powers, duties, rights, and privileges as the personnel from the supported State, except for the power of arrest, unless it is specifically authorized.

Article V recognizes any license, certificate, or permit issued in a state is valid in the requesting State.

Article VI considers deployed personnel as agents of the requesting State for tort liability and immunity purposes.

Article VII recognizes the need to enter into supplementary agreements, such as for law enforcement.

Article VIII states that workers compensation and death benefits are the responsibility of the home state.

Article IX requires the receiving state to reimburse an assisting state for eligible expenses while on an EMAC mission.

Article X discusses evacuation procedures.

Article XI requires a party State to implement the EMAC through the state's legislative process.

Article XII makes the EMAC legislation valid to the extent it is not unconstitutional.

Article XIII prohibits the use of military force by a State NG at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under the Posse Comitatus Act.

## Discussion

The EMAC is a type of interstate mutual aid and assistance agreement. The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack. The EMAC membership includes all states, territories, and the District of Columbia. The EMAC can be used to share any resource one state would like to share with another as long as there is a state of emergency declared by the Governor. A Request for Assistance (REQ-A) documents the support requested under the EMAC and delineates specific personnel and equipment that a requesting State needs. It contains the actual support conducted between the government of the affected State and the State providing the support.

EMAC provisions provide reimbursement authority and liability for personnel and equipment transferred under EMAC. However, delays in reimbursement are a frequent complaint. If eligible for financial assistance under the Stafford Act, the requesting State often delays sending reimbursement to the supporting State until they receive reimbursement from FEMA under the Stafford Act's provisions.

There is no provision in the EMAC Articles for other Governmental agencies (i.e., federal agencies) to be part of the compact. As such, NGB, as a federal agency, is by law not eligible as a member of the compact and cannot grant access to compact capabilities such as access to the EMAC Operating System (EOS) or other compact systems that contain sensitive data. Once data is released through access to a federal agency there is concern over open records requests and data control. There is always concern once EMAC data is accessible outside of the compact because NEMA/EMAC does not fall under Open Records laws. Likewise, the District of Columbia National Guard, and all other National Guard forces operating under Federal control are ineligible for activation/deployment under EMAC. However, these resources may be available for domestic operations through other DOD authorities or a FEMA Mission Assignment to the DOD.

**International Mutual Aid Agreements.** There are three international mutual aid agreements all based upon the EMAC agreement: Pacific Northwest Emergency Management Arrangement (PNEMA), International Emergency Management Group (IEMG), and Northern Emergency Management Assistance Compact (NEMAC). Under the U.S. Constitution, the U.S. Congress must approve any agreement in which a state enters into an agreement with either another state or country. These agreements allows States to enter into state-to-Province mutual aid compacts. For example, under the PNEMA, party states (Alaska, Idaho, Oregon and Washington) could send their NG in SAD into British Columbia and the Yukon Territory for emergency preparedness, response and recovery purposes. The cross-border support has specific Congressional authorization because PNEMA was ratified by Congress. The International Emergency Management Assistance Memorandum of Understanding (IEMAMOU) between Maine, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut, and Quebec, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland similarly provides for the same sort of cross-border support in the Northeast, under similar Congressional ratification.

The specific Congressional authorization is important because, among other things, it provides for liability protection for the SAD personnel. Normally, outside such specific Congressional authority, NG personnel should be in Title 10 and not Title 32 or SAD when crossing into any foreign country. Only under Title 10 do NG personnel have SOFA protections including liability protections. Otherwise, they have no federal protections or immunities whatsoever.

#### Key References:

- a) Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877, 1996
- b) National Emergency Management Associations' Websites: [www.nemaweb.org](http://www.nemaweb.org) and [www.emacweb.org](http://www.emacweb.org)
- c) Emergency Management Assistance Compact Website:  
<https://www.emacweb.org/index.php/resources/international-mutual-aid>
- d) Agreement on Emergency Management Cooperation, with annex, Jul. 7, 2009, T.I.A.S. No. 09-707.
- e) An Act Granting the Consent and Approval of Congress to an Interstate Forest Fire Protection Compact, Pub. L. No. 105-377, 112 Stat. 3391, 1998.
- f) Joint Resolution Granting the Consent of Congress to the Pacific Northwest Emergency Management Arrangement, Pub. L. No. 105-381, 112 Stat. 3402, 1998.
- g) Joint Resolution Granting the Consent of Congress to the International Emergency Management Assistance Memorandum of Understanding, Pub. L. No. 110-171, 121 Stat. 2467, 2007.
- h) Joint Resolution Granting the Consent of Congress to the State and Province Emergency Management Assistance Memorandum of Understanding, Pub. L. No. 112-282, 126 Stat. 2486, 2013.



## EMAC Licensing

Topic: Does the EMAC allow for cross-state practice for medical providers and others requiring a license to operate?

### Guidance

Public Law 104–321, Article V provides reciprocal recognition of license, certificates, or other permits.

The party states agree that “whenever any person holds a license, certificate, or other permit issued by any state party to the compact evidencing the meeting of qualifications for professional, mechanical, or other skills, and when such assistance is requested by the receiving party state, such person shall be deemed licensed, certified, or permitted by the state requesting assistance to render aid involving such skill to meet a declared emergency or disaster, subject to such limitations and conditions as the Governor of the requesting State may prescribe by executive order or otherwise.”

### Discussion

The issue of licensing under an EMAC typically focuses on medical providers. As a general rule, medical providers are limited to providing medical services to the state in which they are licensed. Without the reciprocity provision, the ability to provide medical services by EMAC’ed providers would be significantly restrained. NG healthcare providers (HCP) operating in SAD pursuant to an EMAC must ensure that the EMAC includes the reciprocity provision authorized by Public Law set forth above. Ideally, such a provision will be agreed to in advance to prevent state licensing rules from constraining critical medical services in a disaster response/recovery. The state NG’s medical planners play an important role in this process.

### Key References:

- a) Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact. Pub. L. No. 104-321, 110 Stat. 3877,1996)

## EMAC Liability

Topic: Does the EMAC provide liability protection?

### Guidance

Public Law 104–32, Article VI considers supporting State personnel as agents of the requesting State for tort liability and immunity purposes.

“Officers or employees of a party state rendering aid in another state pursuant to this compact shall be considered agents of the requesting State for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith in this article shall not include willful misconduct, gross negligence, or recklessness.”

### Discussion

NG healthcare providers (HCP) must have current credentials and be properly privileged before providing health care. Credentialing allows a facility to take on liability of a HCP for services rendered in that facility. A state (or municipality) owned facility may be self-insured for malpractice through the State whereas a private facility must carry and pay for its own malpractice insurance or be self-insured and is therefore likely to be more restrictive in credentialing requirements. Tort law of the State will dictate what the medically acceptable practice is in that locality (i.e., supported state).

The authority for NG HCP privileging is dependent on duty status. Credentialing of HCPs in Title 10 or Title 32 is done centrally with final privileging done locally by DoD institutions with appropriate authority. HCP privileging for a NG HCP activated to Title 10 is done by a Military Treatment Facility IAW AR 40-68 or AFI 44-119. The privileges granted while on Title 10 typically include the provider’s full range of skills and are commensurate with his/her MOS or AFSC. HCP privileging for a NG HCP in Title 32 IDT status does not include routine medical care and is usually limited to duties in support of Individual Medical Readiness tasks (e.g., periodic health assessments, immunizations, etc.). HCP privileging for a NG HCP in Title 32 ADT status can include routine medical care, but authorization to do so requires advanced coordination with a Title 10 privileging authority. Both Title 10 and Title 32 have been determined to be federal duty statuses for Federal Tort Claims Act. "Employee of the government" includes members of the National Guard while engaged in training or duty under section 115, 316, 502, 503, 504, or 505 of Title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation. "Acting within the scope of his office or employment" in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of Title 32, means acting in the line of duty. The authorities for credentialing and privileging NG HCPs in SAD are entirely a State matter and determined by State law and Governor’s orders. FTCA does not cover NG HCPs in SAD. Liability coverage is provided by the State. Personnel “EMAC’d” are treated as employees of the

supported state and the process for privileging and credentialing is the same as any other state employee. When operating in SAD, the supporting State must look to the requesting State's EMAC and any accompanying State laws, Executive orders or conditions to determine restrictions or scope of practice.

Additionally, most states have provisions for liability coverage and credentialing process during emergency circumstances such as Good Samaritan laws or non-liability statutes (except for gross negligence) for military operations by NG which may apply to supporting State service-members.

Key References:

- a) Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877, 1996
- b) AR 40-68, Clinical Quality Management, 26 February 2004, Revisions Issued 22 May 2009
- c) AFI 44-119, Medical Quality Operations, 15 April 2011
- d) Federal Tort Claims Act, 28 U.S.C. Chapter 171

## EMAC Law Enforcement Activities

Topic: Can law enforcement activities be performed under an EMAC?

### Guidance

Although Public Law 104-321 itself does not authorize or permit the use of military force of a nature that would violate the Posse Comitatus Act (PCA) if conducted by Active Component Army or Air Force personnel, supporting State National Guard personnel are not subject to the PCA but are subject to the requesting State's approval by the Governor and subject to the requesting State's criminal laws.

Arrest authority is not automatically conferred as part of the scope of the compact. Article IV of the EMAC states: "Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, ***except that of arrest*** unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance."

Article XIII of the EMAC states, "Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited Under the Posse Comitatus Act 18 U.S.C. § 1385 of Title 18."

### Discussion

States retain the unique state power to police, which carries state-specific criminal laws and rules for the use of force. Mutual assistance of certain emergency service functions includes law enforcement. The power of arrest can only be authorized by the requesting State through a supplementary agreement.

Further, the EMAC does not authorize or permit the use of military force that would violate the PCA. Although, "military force" is not defined, it should be read consistent with the basis in which the President may federalize the NG: war or national emergency, terror or WMD attack, and insurrection or rebellion. supporting State NG personnel in SAD are not subject to the PCA but subject to the requesting State's criminal laws.

Article VII of the EMAC permits supplementary agreements between States, including law enforcement activities and police powers. Therefore, a law enforcement supplementary agreement between the supporting State and requesting State is required before NG and others can conduct LEAs.

Key Reference:

- a) Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877, 1996

## EMAC Compensation

Topic: Are EMAC personnel who are injured while on duty in the requesting State covered under EMAC?

### Guidance

Public Law 104–32, Article VIII requires compensation “each party state shall provide for the payment of compensation and death benefits to injured members of the emergency forces of that state and representatives of deceased members of such forces in case such members sustain injuries or are killed while rendering aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within their own state.”

### Discussion

Article VIII requires the requesting State to compensate injured personnel under the worker's compensation procedures of the supporting State. Workers compensation and death benefits are responsibility of the supporting State. The requesting State may also extend workers' compensation and death benefits to injured personnel from the supporting State IAW the laws and regulations of the supporting State.

### Key Reference:

- a) Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact, Pub. L. No. 104-321, 110 Stat. 3877, 1996

## EMAC Reimbursement

Topic: What are the requesting State's reimbursement obligations under EMAC? How is the supporting State compensated?

### Guidance

Public Law 104-32, Article IX requires Reimbursement for the supporting State. "Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states."

Article VI requires the Receiving states to assume the burden to cover any future claims resulting from sending states activities assumed under EMAC, "Officers or employees of a party state rendering aid in another state pursuant to the compact shall be considered agents of the requesting State for tort liability and immunity purposes. No party state or its officers or employees rendering aid in another state pursuant to this compact shall be liable on account of any act or omission in good faith on the part of such forces while so engaged or on account of the maintenance or use of any equipment or supplies in connection therewith. Good faith shall not include willful misconduct, gross negligence, or recklessness."

### Discussion

Article IX requires the requesting State to reimburse the supporting State for eligible expenses (including damaged equipment) while on an EMAC mission. The supporting agency is responsible for ensuring all activity is properly authorized, goods are received, services are provided, and costs are reasonable and supported by documentation maintained by the respective agencies. JTF-States must memorialize transfers of property and equipment with EMACs during the prepositioning or early response conducted with training authorities. Unless equipment or property is transferred under the EMAC, the cost to transport back to the supporting State cannot be reimbursed by FEMA if the requesting State is receiving federal assistance IAW the Stafford Act.

Supporting States often wait for reimbursement from the requesting State when that requesting State relies on Stafford Act assistance to provide disaster related compensation. Although FEMA can issue expedited funding to the grantee to support requested logistics requirements, FEMA can only provide disaster funds to the requesting State. In order to expedite funding before work is completed, FEMA writes a project worksheet that includes the statement of work detailing what the funding may be used for, a list of what is needed, and the estimated cost. Partial funds are then transferred to the requesting State. Usually, the State / Territorial Military Department must submit a request to the State EMA in order for State EMA to disburse those funds.

Key References:

- a) *Joint Resolution Granting the Consent of Congress to the Emergency Management Assistance Compact. Pub. L. No. 104-321, 110 Stat. 3877, 1996*
- b) National Emergency Management Associations' Websites: [www.nemaweb.org](http://www.nemaweb.org) and [www.emacweb.org](http://www.emacweb.org)
- c) *Disaster Operations Legal Reference v3.0, FEMA P-1084, 20 January 2017*

4. Defense Support of Civil Authorities (DSCA)  
DSCA Support Framework (CARRLL Factors)

Topic: When responding to an RFA in a domestic operation, what are the criteria that requests should be measured against?

Guidance

Generally, all requests for both emergency and pre-planned DSCA must be written, or if time does not permit, committed to writing at the earliest date. Requests should include a commitment to reimburse DoD/NG as appropriate, except requests for immediate response, and mutual or automatic aid when conducted in accordance with applicable coordinated agreements and authorizations. Support should be provided on a non-reimbursable basis only if required by law or if both authorized by law and approved by the appropriate official. Unless approval authority is otherwise delegated by SecDef, all DSCA requests shall be submitted to the office of the Executive Secretary of the DOD.

IAW DoDD 3025.18 and in order to ensure legitimacy and compliance, all requests from civil authorities and qualifying entities for assistance shall be evaluated for:

- (1) Cost (cost-effectiveness, the source of funding and the effect on NG funding).
  - (2) Appropriateness (whether providing the support withstands scrutiny and is in the interest of the NG).
  - (3) Readiness (impact on the NG ability to perform its other primary missions).
  - (4) Risk (safety of NG personnel and others).
  - (5) Lethality (potential use of non-lethal and/or lethal force by or against NG personnel).
  - (6) Legality (compliance with laws, policy and regulations).
- (CARRLL)

NG Civil Support missions are generally conducted to assist in:

- (1) Supporting civil authorities whose capabilities or capacity is insufficient to meet current requirements without general purpose, specialized, or unique NG personnel or capabilities
- (2) Protecting life, property, and safety of U.S. citizens and persons
- (3) Protecting critical U.S. infrastructure
- (4) Providing humanitarian assistance during disaster response and domestic emergencies
- (5) Providing support to designated law enforcement activities and operations
- (6) Providing support to designated events, programs, and other activities.

Discussion

All DSCA operations MUST start with a Request for Assistance (RFA) from the proper civilian authority. Immediate Response Authority (IRA) is a type of DSCA and must also start with an RFA from the proper civilian authority. Any mission that cannot be formally justified against the CARRLL factors above should not be performed unless approved by SecDef.

Support missions are largely contingent on funding and authorization as it relates to the mission to be performed and the expected outcome. NG personnel receive equipment and funding for

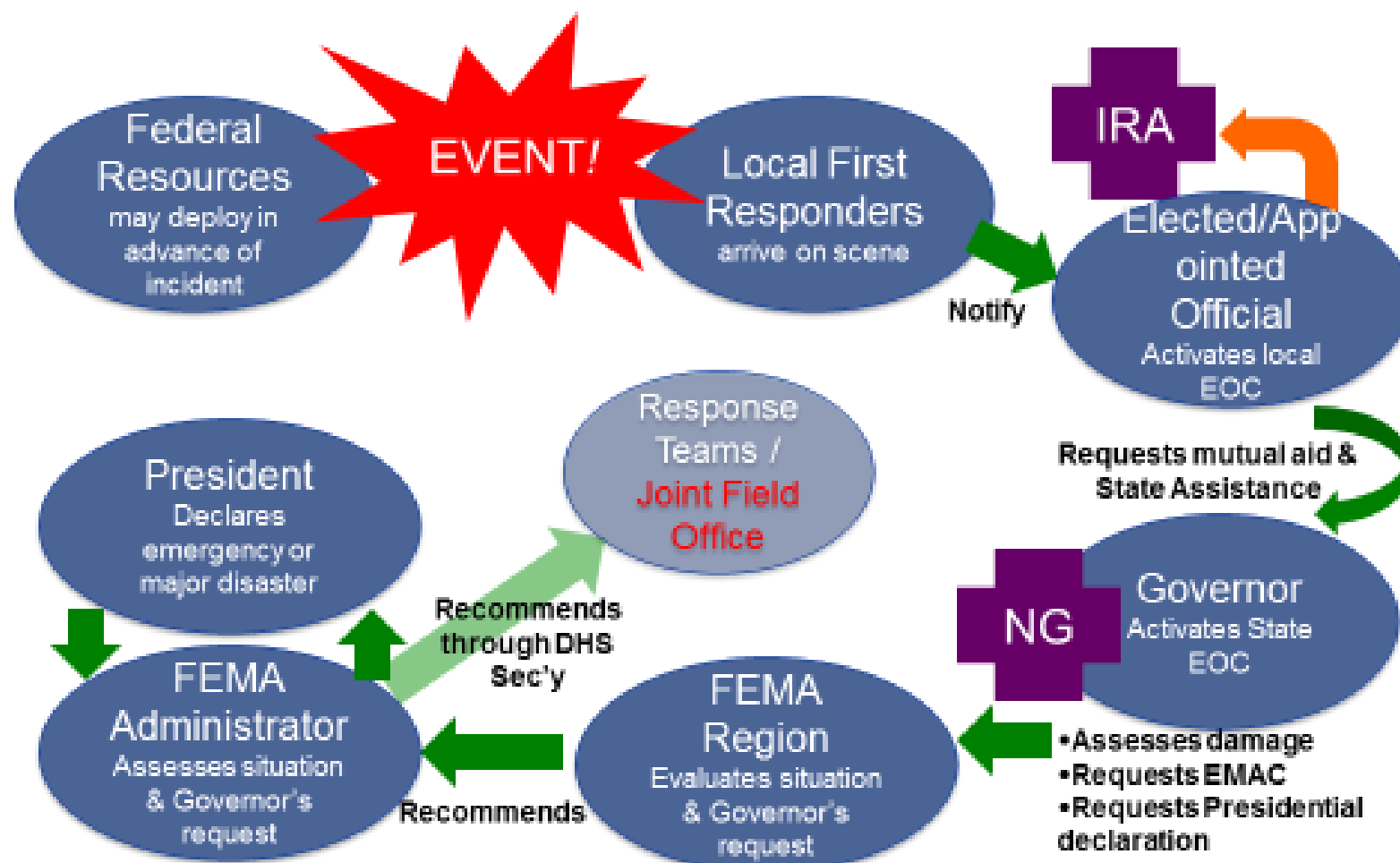


activities across numerous types of missions. Commanders must ensure the proper utilization of personnel, equipment, and funds at all times.

Key References:

- a) 32 Code of Federal Regulations Part 185
- b) DoDD 3025.18, *Defense Support of Civil Authorities*, 19 March 2018
- c) JP 3-28, *Defense Support of Civil Authorities*, 29 October 2018
- d) CJCS DSCA EXORD, 301600Z JUL 19
- e) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

## OVERVIEW OF DSCA





1. DoD has a statutory responsibility to provide the support (Title 32 U.S.C. Ch. 9, Presidential Protection Act, etc.)
2. Requested support could be provided in the normal course of training or operations (Title 10 U.S.C. § 277)
3. Providing the requested support results in a benefit substantially equivalent to that which would otherwise be obtained from military operations or training (Title 10 U.S.C. § 277)

## Dual Status Commander

Topic: What is a Dual Status Commander (DSC) and how is it requested?

### Guidance

A DSC is a commissioned officer of the Regular Army or Air Force (32 U.S.C. § 315) or a federally recognized ARNG or ANG officer (32 U.S.C. § 325) authorized, by SecDef, with the consent of the applicable Governor of a state, to exercise command on behalf of, and receive separate orders from, a federal chain of command and exercise command on behalf of, and receive separate orders from, a state chain of command. A DSC is the usual and customary arrangement when multiple DoD components (“Armed Forces and the National Guard”) are employed simultaneously in support of civil authorities in the United States.

32 U.S.C. § 325 authorizes the relief from National Guard duty when ordered to active duty

(a) Relief Required.-

(1) Except as provided in paragraph (2), each member of the Army National Guard of the United States or the Air National Guard of the United States who is ordered to active duty is relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, as the case may be, from the effective date of his order to active duty until he is relieved from that duty.

(2) An officer of the Army National Guard of the United States or the Air National Guard of the United States is not relieved from duty in the National Guard of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands or the District of Columbia, under paragraph (1) while serving on active duty if-

(A) the President authorizes such service in both duty statuses; and

(B) the Governor of his State, or of the Commonwealth of Puerto Rico, Guam, or the Virgin Islands, or the commanding general of the District of Columbia National Guard, as the case may be, consents to such service in both duty statuses.

(b) Advance Authorization and Consent. The President and the Governor of a State or Territory, or of the Commonwealth of Puerto Rico, or the commanding general of the District of Columbia National Guard, as applicable, may give the authorization or consent required by subsection (a)(2) with respect to an officer in advance for the purpose of establishing the succession of command of a unit.

(c) Return to State Status. So far as practicable, members, organizations, and units of the Army National Guard of the United States or the Air National Guard of the United States ordered to active duty shall be returned to their National Guard status upon relief from that duty

### Discussion

A DSC is a military commander who may, in accordance with the law, serve in two statuses, Federal and State, simultaneously while performing the duties of those statuses separately and distinctly. A commander can only be a DSC of only the state he or she is affiliated with. In other

words, there cannot exist multi-state DSCs as an officer can only hold a commission in one State's National Guard.

Prior to any support request of a DSC, a standing memorandum of agreement (MOA) between the State and DoD is required. For the activation of a DSC, the support request process begins with the State Governor providing his or her consent to have his pre-identified trained and qualified officer appointed as DSC. The process should be coordinated in the military chain from the State TAG to CDRUSNORTHCOM and CNGB. A recommendation for approval of the DSC will be provided to the SecDef via the CJCS and Assistant Secretary of Defense Homeland Defense & Hemispheric Affairs (ASD/HD&HA). With the Governor's consent and the SecDef's authorization, the DSC is activated. Upon notification (verbal or written) that a DSC has been authorized, Joint Force Headquarters – State releases State Command Orders for the appointed DSC, if required, and N-NC/J1 provides the federal (Title 10) orders.

USNORTHCOM and OSD do not require a new MOA to be accomplished if there are new signatories to the agreement (i.e., new Governor, new SecDef). The preexisting agreement remains in force until terminated or superseded (see termination language in MOA).

A GO must be "of the line" (GOL) to qualify as a DSC. ARNG officers are assigned to DSC positions pursuant to the National Guard Assistant Program (NGAP) and must be GOL-qualified for such assignment IAW AR 135-156. ANG officers must be GOL-qualified to be assigned to any position other than Adjutants General or Assistant Adjutants General IAW ANGI 36-2501. Additional factors must be considered for GOL-qualified Adjutants General or Assistant Adjutants General who are requesting to be dual-hatted for service as a DSC. Contact NGB-SLMO at Ng.ncr.ngb-arng.mbx.gomailbox@mail.mil for further assistance.

Other officers as DSC

Key References:

- a) 32 U.S.C. §325, "Relief from National Guard Duty When Ordered to Active Duty"
- b) Joint Publication 3-28, "Defense Support to Civil Authorities," Appendix C, "Department of Defense Dual-Status Commander" 29 October 2018
- c) National Defense Authorization Act. Pub. L. No. 112-81, 125 Stat. 1298, (2011), Sec. 515

## Posse Comitatus Act

Topic: What is the Posse Comitatus Act (PCA)? How does it affect the State National Guard?

### Guidance

PCA is a criminal statute codified at 18 U.S.C. §1385 that makes it illegal to “willfully use any part of the [Title 10] Army or the [Title 10] Air Force as a posse comitatus or otherwise to execute the laws” unless authorized by the Constitution or Congress. It carries a fine and possible two-year prison term.

The term Posse Comitatus is unique and somewhat antiquated. It stems from a common law concept that allowed for local authorities (e.g., county sheriffs) to conscript able-bodied men in that jurisdiction to keep the peace during emergencies. As currently applied, the PCA is designed to prevent the Active Duty (Title 10) military from overstepping their constitutional/ statutory role by performing policing functions that should be the responsibility of civilian law enforcement agencies (LEA).

The law applies without exception within the United States and limits direct assistance to civilian law enforcement such as a) interdiction of a vehicle/ aircraft; b) search or seizure; c) an arrest, apprehension, stop and frisk; d) engaging in interviews, interrogations, or questioning of potential witnesses or suspects; e) using force or physical violence, except in self-defense or defense of others; f) evidence collection, security functions, crowd and traffic control, and operating, manning, or staffing checkpoints; g) surveillance or pursuit of individuals, vehicles, items, or locations; h) acting as undercover agents, informants, investigators, or interrogators; and i) forensic investigations or other testing of evidence.

Other activities are measured against a three-part test which holds it to be a violation of the PCA if the activity is either, direct and active, pervades the civilian LEA activity, or subjects U.S. citizens to military power that is regulatory, proscriptive, or compulsory in nature (*Yunis v. United States* 924 F. 2d 1086; *United States v. Rasheed* 802 F. Supp 312.). There are exceptions for military purposes, such as emergencies, WMD incidents, and civil disturbances among others. However, it has been held that these exceptions should be narrowly interpreted and cannot be used as a subterfuge for getting around the PCA.

In addition to the criminal provisions found in 18 U.S.C. §1385, 10 U.S.C. §275 requires the SecDef to prescribe regulations that prohibit any Title 10 component from direct participation in LEA activities. The SecDef has done so in DoDI 3025.21, which bars DoD personnel from providing direct civilian law enforcement assistance in such areas as those listed above. The regulation also clarifies the scope of incidental benefit which DoD training events may provide to LEAs by allowing the information needs of civilian LEAs to be considered when scheduling routine training missions, but wholly prohibiting the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials. Both the statutes and regulation bar the provision of direct assistance to LEAs by Title 10 personnel.

**DoDI 3025.21 does NOT apply to NG personnel in SAD or Title 32.** The PCA has been held not to apply to the non-federalized National Guard. This includes duty under Title 32 and SAD. When

the NG is not in a federal status, such as operating under 32 U.S.C. §112 or §502, there is no violation of the PCA. *United States v. Hutchings*, 127 F3d 1255 (1997); *Gilbert v. United States*, 165 F3d 470 (1999). “Use of NG to support investigation... did not violate federal law as under law Governor may place NG personnel in state status to support (criminal) investigations.” *United States v. Benish*, 5 F3d 20 (1993).

**DoDD 3025.18** prohibits Title 10 and NG personnel in §502(f)(2) operational status from conducting operations at polling places and activities similar to those prohibited by 18 U.S.C. §§592-594 (physical presence, interference, and intimidation).

### Discussion

The prohibitions of PCA do not apply to National Guard in Title 32 status or SAD. The restrictions would apply in any Title 10 status and therefore must be assessed when planning for or converting NG personnel to Title 10 under any mechanism. (e.g., hip pocket orders, dual status command, etc.). DoDI 3025.21 provides detailed guidance on what direct assistance provided to LEAs is permissible and prohibited.

### Key References:

- a) 18 U.S.C. §1385, *Use of Army and Air Force as posse comitatus*
- b) 18 U.S.C. Ch. 29, *Elections and Political Activities*
- c) DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 19 March 2018
- d) DoDI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, 8 February 2019
- d) Joint Publication 3-28, *Defense Support to Civil Authorities, Chapter III*, 29 October 2018



## Insurrection Act

Topic: What is the Insurrection Act and what actions may be taken by NG personnel?

### Guidance

10 U.S.C. Ch. 13, The Insurrection Act, allows the President to call the militia or other states into federal service and use the armed forces to, among other things, suppress insurrections, unlawful obstructions, rebellions, domestic violence, or the unlawful combination or conspiracy thereof.

If there is an insurrection in a state, the President, at the request of the state's legislature, or Governor if the legislature cannot be convened, may call militia of other states into federal service as well as use the armed forces to suppress the insurrection.

Whenever the President considers that unlawful obstructions, combinations, or assemblages or rebellion against authority of the United States makes it impracticable to enforce the laws of the United States in any state or territory by judicial proceedings, the President may call into federal service such of the militia of any state and use such of the armed forces to enforce the laws or suppress the rebellion.

The President can order the militia and/or the armed forces to suppress insurrection, domestic violence, unlawful combination or conspiracy if: (a) it so hinders the execution of law of that State and of the United States and it deprives citizens of constitutional rights (e.g., due process); or (b) it opposes or obstructs the execution of laws or impedes the course of justice. In the event of the deprivation of rights, the State is deemed to have denied its citizens equal protection of laws.

In accordance with the Insurrection Act and 10 U.S.C. §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 the Commanding General, JFHQ for the District of Columbia National Guard.

### Discussion

Under the Insurrection Act, the President could order NG into Title 10 without their consent and without the consent of their Governor. The NG would maintain its militia status but would take orders directly from the President. This is a unique authority that can only be used in the limited cases that qualify under the statute above. This authority has rarely been used and would not be a sourcing solution for disaster relief or national special security event (NSSE) type events.

Key Reference:

- a) 10 U.S.C. Ch. 13, "Insurrection", §§251-254

## 5. Status State Active Duty

Topic: What is State Active Duty (SAD), what are the operating parameters of SAD, and how is it funded and controlled?

### Guidance

SAD is strictly a state militia status, funded and controlled entirely by the state. All limits and authorities for utilization are controlled by the states. Generally, DoD and service guidance do not apply unless there is use of federal resources, such as equipment.

When National Guard units or personnel are not under federal control, they report to the Governor of their respective state or territory. Each of the 54 National Guard organizations is supervised by TAG of the state or territory who normally exercises command of its National Guard personnel on behalf of the State Governor. Under State law, the National Guard provides for the protection of life and property as well as preserving peace, order, and public safety.

The requirements, authorizations, and compensation of the National Guard operating in SAD (i.e., State militia status) are contained in State or Territorial law. All costs and liabilities are born wholly by the State or Territory. The United States Property and Fiscal Officers (USPFOs) are NOT the resourcing authorities for SAD missions.

### Discussion

The history of SAD traces its origins to the service performed by the militia since the founding of the Nation. SAD describes the operational status of the National Guard pursuant to the authorities reserved to the States under the U.S. Constitution, Article I, Section 8. SAD is governed by State law, which makes it a more appropriate and versatile sourcing option to respond to local and state-directed operational requirements. Generally, federal concerns regarding SAD operations are limited to issues of regulatory compliance over Federal equipment and resources that may be contemplated for use by the States when employing their National Guard personnel in SAD. For example, Federal regulations and policy restrict the use of Federal equipment and resources procured for military intelligence purposes in SAD. In addition, Federal policy regulates the reimbursement of Federal resources expended by National Guard in SAD. Personnel in SAD are considered to be State employees, which generally means State law should be consulted for questions about the operational or administrative authority or requirements pertaining to a SAD mission or activity. SAD is often used by the Governor as a first response mechanism for disaster relief and the State is eligible to be reimbursed IAW the Stafford Act for disaster response activities. For national special security events (NSSEs), under certain circumstances, SAD may be funded through the provision of a federal grant.

TAGs may employ their NG in SAD IAW state law, including use as LE. However, as a sourcing solution for support to LE, TAGs should consider using SAD in a back-up role for LE, rather than in a "front line" role in which there might be an increased chance of adverse interaction with civilians. Other considerations that weigh on the use of NG for LE activities include armed status, arming orders, and rules on the use of force. TAGs may consider using

SAD to provide force protection to critical infrastructure and state facilities, thereby freeing up civilian LE to perform security functions and more traditional community policing roles. SAD use of federal equipment provided by DoD is subject to reimbursement through the USPFO.

Some states also maintain a State Defense Force (SDF) created under that State's law which falls under that State's military department. The NG will not spend Federal funds, to include pay and allowances, subsistence, transportation, medical care and treatment, or use of Federal equipment for activities with the primary purpose of training or otherwise for the support of SDFs.

Key References:

- a) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2018
- b) CNGBI 5500.01, *National Guard Interaction with State Defense Forces*, 15 June 2017
- c) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

## Title 32 – IDT/AT Duty

Topic: Under what authority is Inactive Duty Training/Active Training (IDT/AT) performed?  
Can an operational benefit be provided during IDT/AT?

### Guidance

IDT and AT are performed under 32 U.S.C. § 502(a) – a NG unit shall assemble for drill and instruction at least 48 times each year (IDT) and participate in training or other exercises at least 15 days each year (AT).

Per NGR 350-1, IDT and AT are mandatory duty with a **primary** purpose of training for unit readiness for federal missions. NGR 350-1 allows for limited DSCA training. Training for these contingencies should be integrated with the training for wartime missions. Per ANGI 36-2001, ANG units have a dual mission to develop, maintain, and provide the AF with operationally ready units to augment the Active AF whenever necessary, and support DoD peacetime or contingency operations and to provide units organized, equipped, and trained to function efficiently in the protection of life and property and the preservation of peace, order, and public safety under competent orders of Federal or State authorities.

**IDT.** There are several categories of IDT. The most common forms of IDT are regularly scheduled unit training and additional IDT periods. Additional IDT periods can include Additional Training Periods (ATP) for post-mobilization mission requirements, Additional Flying and Flight Training Periods (AFPT), and Readiness Management Periods (RMP). These IDTs are wholly distinct from “additional training” under 32 U.S.C. §502(f)(1). The term “additional training” for § 502(a) training should not be used interchangeable with § 502(f) training. In addition to these forms of IDT, Service members can also perform funeral honors duties for IDT.

**ADT.** Per DoDI 1215.06, the primary purpose of ADT is to provide individual or unit readiness training. Included in the ADT category is AT. Requisite training is conducted through an annually approved and published training plan. Planning for AT, to include all administrative and logistical support, is the TAGs responsibility. JFHQ staff review and validate each unit’s requested AT site, dates, and proposed training mission prior to submitting the State AT plan to NGB. All changes to the approved AT plan are submitted to NGB. However, AT will **not** be performed in response to an emergency by order of the Governor in support of civil authorities, including those emergencies when a presidentially declared disaster qualifies a State for reimbursement of associated preparation or recovery costs through a lead federal agency. By exception, AT may be used in response to a State or federal emergency that occurs during a pre-planned annual training event when, at the discretion of TAG, the work performed satisfies or complements the unit's wartime mission or annual training objectives.

## Discussion

DoDI 1215.06, Encl 3, Para. 3.a.(1) states “Units or individuals that participate in IDT may provide support to DoD mission requirements (i.e., operational support (OS)) as a result of the training.” NG assets may be made available under current training plans if applicable under 32 U.S.C. § 502(a) or (f)(1). Unlike AT, there is no prohibition in DoDI 1215.06 to rescheduling IDT, but it still must be training—OS is incidental. DoDI 1215.06 prohibits rescheduling AT for the purpose of domestic incident response. Further, DoDD 3025.18, Para. 4.j. restricts National Guard personnel from being placed or extended in a Title 32 status to conduct State immediate response activities.

The purpose of IDT and AT is to train units to the standards of their assigned METL task, leading to validation and certification at the culmination point. DSCA training is typically a valid component of such training. Accordingly, this training can be conducted as part of a real-world DSCA operation as an “incidental benefit,” provided that it is in conjunction with properly scheduled TAG-approved training. However, if unit schedules/locations/tasks/costs of the training are drastically changed, it is difficult to argue that the operational benefit was truly “incidental” to the training. Whether a situation fits in with the concept of an “incidental benefit” is a fact-driven inquiry.

AT support to state emergency response may occur in very rare circumstances. For example, a mobile hospital unit is required to deploy for training, and they deploy to support a state emergency. Since their training consequently supports a real mission and they had to deploy for training anyway, this might be an authorized use of AT. Another example of potentially authorized use of personnel in AT status to support a state mission is state directed immediate response authority pursuant to DoDD 3025.18 paragraph 4.j. The authority of State officials is recognized to direct a State immediate response using NG personnel under State command and control already in Title 32 (IDT, AT, FTNGD), but, again, NG personnel may not be placed in or extended in Title 32 to conduct State immediate response activities. Any support using federal dollars is to be reimbursed to the federal government.

Innovative Readiness Training (IRT) is authorized under 10 U.S.C. § 2012 and implemented by DoD through DODI 1100.24. IRT allows NG in Title 32 to conduct pre-approved training that provides incidental services or support to eligible organizations and activities in communities of civic need. IRT cannot be used for civilian law enforcement purposes or for response to natural or manmade disasters.

### Key References:

- a) 32 U.S.C. § 502, Required Drills and Field Exercises
- b) 52 Comp Gen 35 B-176491, 17 July 1972
- c) DoDI 1215.06, *Uniform Reserve, Training and Retirement Categories for the Reserve Components*, 11 March 2022, Incorporating Change 2, 12 July 2022
- d) ANGI 36-2001, *Management of Training and Operational Support Within the Air National Guard*, 30 April 2019
- e) NGR 350-1, *Army National Guard Training*, 23 June 2021
- f) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

Title 32 – 502(f) (FTNGD-OS 502(f) Status)

Topic: What are the duties and limitations of FTNGD-OS personnel during DSCA missions?

Guidance

The purpose of FTNGD-OS is to provide the necessary skilled manpower to support existing or emerging requirements under 32 U.S.C. § 502(f). Training may occur incidental to performing FTNGD-OS.

Per 32 U.S.C. § 502(f), under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may without his consent, but with the pay and allowances provided by law; or with his consent, either with or without pay and allowances; be ordered to *perform training* or *other duty*.... The training or duty ordered to be performed may include support of operations or missions undertaken by the member's unit at the request of the President or SecDef.

Per CNGBI 1302.01, members performing duty under the authority of 32 U.S.C. § 502(f) will not perform duties that are not specific requirements of the mission for which the members were ordered to duty. If circumstances require a change of duty, Commanders must amend/curtail the current order. Commanders may order members performing duty under 32 U.S.C. § 502(f) to respond to an emergency IAW Immediate Response Authority and State law. Section 502(f) orders will not be issued for extended periods if it is known that the member will need to have their orders curtailed during the tour. Orders will not be broken or divided solely to allow the continued payment of temporary duty status (TDY) entitlements which are not directly required by the mission.

Discussion

***The policy on the use of 32 U.S.C. §502(f) is under heightened scrutiny and is subject to change. Use 32 U.S.C. §502(f) with caution, pursuant to a legal review, and only after full comprehension of current policy and restriction on its use.***

NG members in 32 U.S.C. § 502(f) operational support duty status may be used for DSCA if the Governor makes a formal request for DSCA authority IAW DoDI 3025.22. If approved by SecDef, support could occur under 32 U.S.C. § 502(f)(2). The utilization of FTNGD-OS personnel is largely limited to the underlying purpose and funding for which they were brought onto duty.

**Drilling on operational 32 U.S.C. § 502(f) orders.**

ARNG: AR 135-200 (para 6-34(e)), generally prohibits drilling with one's parent unit while on FTNGD-OS: "[S]oldiers are not authorized to participate in battle assembly or AT with the parent unit while performing FTNGD-OS duty with another unit or headquarters." (para 6-34(e), p.22). This provision is also reflected in PPOM 20-003, Enclosure 2, para 10 (<https://www.milsuite.mil/book/docs/DOC-729793>). In similar situations (e.g., Southwest border mission), exceptions to policy (ETPs) have been requested from HQDA to allow members to

train alongside their units while on OS as long as the operational 32 U.S.C. § 502(f) funds are not used to pay for the Soldier's travel to and from drill/AT.

ANG: ANGI 36-2001 has similar language but provides a built-in exception: "6.2.2.7. ANG members performing ADOS-RC or FTNGD-OS will not attend IDT or AT with their unit of assignment. As an exception, members may participate in IDT or AT when requested by the unit commander and approved by the supported agency/commander. Approvals must be documented in writing and be maintained by the drilling unit."

ANGI 36-2001, para 3.4. also provides: "Constructively Present. The term constructively present applies to unit members who participate in unit training assemblies while on AD or FTNGD orders which overlap scheduled drill. Member physically present and effectively participating in unit training but in another pay status (i.e., AGR, Temp AGR, ADOS-AC or MPA, ADOS-RC or FTNGD). A member is not eligible for rescheduling, an IDT period for which they were marked constructively present."

Care must be taken not to confuse the status of the member supporting an operational 32 U.S.C. § 502(f) mission when the member attends drill or AT. The member is still on the operational 32 U.S.C. § 502(f) orders and the drill or AT should be considered a TDY within a TDY. Essentially the member is performing duty in a different location and does not revert to an IDT status when performing drill. As such, the member would be entitled to mileage and lodging paid by the State with their drill and AT funds and not the operational 32 U.S.C. § 502(f) funds.

Further, as noted in *Perpich v. DOD*, 496 U.S. 334 (1990), NG members may NOT wear multiple "hats"/ hold multiple statuses simultaneously. This concept is also captured in CNGBI 1302.01, which states "Members performing duty under the authority of 32 U.S.C. § 502(f) will not perform duties that are not specific requirements of the mission for which the members were ordered to duty." Members on § 502(f)(2) orders cannot perform any other duty including a SAD mission since they are precluded from performing duties that are not specific requirements of the § 502(f)(2) mission. This point is also relevant to units that have personnel on different § 502(f) missions in a given year, for example, support to COVID-19 response mission and civil disturbance operations. Members who are performing duty on one § 502(f) mission should have their orders curtailed prior to being ordered to perform duties on another mission because the funds cannot be commingled between missions.

#### Key References:

- a) 32 U.S.C. § 502, *Required Drills and Field Exercises*
- b) DoDI 1215.06, *Uniform Reserve, Training and Retirement Categories for the Reserve Components*, 11 March 2014, Incorporating Change 2, 12 July 2022
- c) DoDI 3025.22, *The Use of the National Guard for Defense Support of Civil Authorities*, 26 July 2013, Incorporating Change 15 May 2017
- d) AR 135-200, *Active Duty for Missions, Projects, and Training for Reserve Component Soldiers*, 20 October 2020
- e) CNGBI 1302.01, *Guidance for Members Performing Duty Under the Authority of 32 U.S.C. § 502(f)*, 23 April 2012
- f) <https://supreme.justia.com/cases/federal/us/496/334/>

## Title 10

Topic: What are the duties and limitations of Reserve Component personnel during DSCA/DOMOPS?

### Guidance

Reserve Component includes the Reserve and the NG called as a reserve force to active duty under Title 10 U.S.C. Chapter 1209. When called to active duty, members of the RC fall under the command and control of the Title 10 active component Commander to which they are assigned. Outside of the Title 10 warfighting mission, Reserve personnel, including the National Guard, may be called to active duty under several authorities: full mobilization, partial mobilization, Presidential Reserve Call-Up, Invasions and Rebellions, Insurrection Act, Reservists Recalled for Domestic Events, and Active Duty for Preplanned Missions in Support of the Combatant Commands.

RC personnel rarely support domestic operations in Title 10 because of limitations imposed by the Posse Comitatus Act. Generally, the Posse Comitatus Act prohibits federal military personnel from providing direct law enforcement support such as search, seizure, arrest, or other similar activity unless otherwise authorized by law, but permits indirect military assistance to law enforcement such as training or maintaining equipment.

### Discussion

Generally Reserve Components can respond to IRA requests if they are already in a duty status, including a training status; however, Reserve Component members and units cannot intentionally be "placed or extended" on orders for the specific purpose of IRA IAW DoDI 1215.06. Training, however, can be rescheduled for training purposes.

In addition, members of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve can be ordered to active duty for a period not more than 120 days in order to respond to a major disaster or emergency IAW the provisions of 10 U.S.C. § 12304a.

The DSCA response under 10 U.S.C. § 12304a is for more enduring situations other than IRA. Title 10 Reserve Components can respond to requests for assistance from a lead federal agency, such as FEMA under the Stafford Act. Once a Stafford Act declaration request has been made, Title 10 Reserve Components can be recalled for domestic events and become a sourcing solution pursuant to 10 U.S.C. § 12304a. When a Governor requests Federal assistance in responding to a major disaster or emergency the SecDef may, without the consent of the member affected, order any unit, and any member not assigned to a unit organized to serve as a unit, of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to active duty for a continuous period of not more than 120 days to respond to the Governor's request.

### Key References:

- a) DoDI 1235.12, *Accessing the Reserve Component (RC)*, 7 June 2016, Incorporating Change 1, 28 February 2017



- b) For Full Mobilization: 10 U.S.C. §12301(a) which allows for full mobilization in time of war or national emergency declared by Congress or when otherwise authorized by law.
- c) For Partial Mobilization: 10 U.S.C. § 12302(a) which allows for partial mobilization with a Presidential declaration of national emergency and invocation of the partial mobilization making up to one million members of the Ready Reserve available for up to 24 consecutive months.
- d) For Presidential Reserve Call Up: 10 U.S.C. § 12304 which allows for presidential reserve call-up. This is the involuntary activation of up to 200,000 members for up to 365 days by the President. Such service must be for other than training and may not exceed 365 days. It authorizes ordering members of the RC to active duty without their consent, without declaration of war or national emergency, for operations other than domestic disasters except those involving a use or threatened use of a WMD or a terrorist attack or threatened terrorist attack in the United States that results, or could result, in significant loss of life or property.
- e) Invasions and Rebellions: 10 U.S.C. § 12406 which allows the President to call the National Guard into federal service if the United States or any U.S. state or territory is invaded, or when: invasion is threatened by a foreign nation, there is a rebellion or danger of rebellion against the U.S. Government, or the President is unable to execute U.S. laws without active forces.
- f) Insurrection Act: 10 U.S.C. Chapter 13 which allows the President to call the militia into federal service and use the armed forces to, among other things, suppress insurrections, unlawful obstructions, rebellions, domestic violence, or the unlawful combination or conspiracy thereof.
- g) Reservists Recalled for Domestic Events: 10 U.S.C. § 12304a which allows SecDef to order any member of the Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve to involuntary active duty up to 120 days for domestic events when a Governor requests federal assistance in responding to a major disaster or emergency.
- h) Active Duty for Preplanned Missions in Support of the Combatant Commands: 10 U.S.C. § 12304b which allows service secretaries to order members of the Selected Reserve (including National Guard) without their consent onto active duty for no more than 365 days to augment the active forces for a preplanned mission in support of a combatant command.

## State Defense Forces

Topic: What are State Defense Forces (SDF), what are the operating parameters of SDF, and how are they funded and controlled?

### Guidance

States are authorized to establish State Defense Forces (SDFs) under Section 109 of title 32 of the U.S. Code, but SDFs are not part of the United States Armed Forces. SDFs are strictly a state militia, funded and controlled entirely by the state. The NG will not spend Federal funds, to include pay and allowances, subsistence, transportation, medical care and treatment, or use of Federal equipment for activities with the purpose of training or otherwise for the support of SDFs.

### Discussion

The militia is defined in 10 U.S.C. § 246 to include “all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.” The classes of the militia include the organized and unorganized militia, wherein the former includes the National Guard (i.e., ARNG and ANG) and Naval Militia, and the latter includes all others in the militia who are not in the National Guard or Naval Militia. The President may call the National Guard into federal service under 10 U.S.C. § 12406 for the three purposes enumerated in Article 1, section 8 of the U.S. Constitution, i.e., to repel invasion, suppress insurrection, or enforce federal laws. In addition, the President may call both the organized and unorganized militia into federal service under 10 U.S.C. §§ 251-253 (Insurrection Act) to suppress insurrection or to enforce either federal or state laws.

The SDFs are specifically authorized in 32 U.S.C § 109(c), which provides in relevant part: “A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.” So, the SDFs, as a whole, may not be called or ordered into federal service, but are still subject to active federal service as members of the armed forces under the Military Selective Service Act, 50 U.S.C. § 3801 et seq., should Congress authorize a draft in the future. 32 U.S.C. § 109(e) further provides that a member of the NG may not become a member of an SDF. The SDF authority under 32 U.S.C. § 109 is implemented through CNGBI 5500.01A.

CNGBI 5500.01A addresses how the National Guard will interact with the SDF for the purposes of training, exercises and in support of civil support operations. The instruction also lays out the requirements for the wear and appearance of military uniforms by SDF personnel to include the wear of a modified version of the Army Service Uniform.

Key References:

- a) 32 U.S.C. § 109, *Maintenance of other troops*
- b) CNGBI 5500.01A, *National Guard Interaction with State Defense Forces*, 7 May 2024

## 6. NGB Role and Capability

### CNGB Responsibilities

Topic: What are the duties and responsibilities of the CNGB?

#### Guidance

Per 10 U.S.C. § 10502 (c), the Chief of the National Guard Bureau (CNGB) is a principal advisor to SecDef, through the CJCS, on matters involving non-federalized National Guard personnel and on other matters as determined by the SecDef; and the principal adviser to the SecAR and the Chief of Staff of the Army, and to the SecAF and the Chief of Staff of the Air Force, on matters relating to the NG, ARNGUS, and ANGUS. As a member of the JCS, the CNGB has the specific responsibility of addressing matters involving non-federalized National Guard forces in support of homeland defense and civil support missions.

Per DoDD 5105.77 (NGB Charter) CNGB is a principal advisor to the SecDef through the CJCS on matters involving non-federalized National Guard ...CNGB, shall serve as the principal advisor to the SecAR, the Chief of Staff of the Army, SecAF, and the Chief of Staff of the Air Force, on matters relating to the National Guard. CNGB serves as an advisor to the Commanders of the COCOMS on National Guard matters pertaining to their combatant command missions...In coordination with the supported Commanders of the COCOMS, supporting the development of operational concepts, capabilities, and plans for domestic operations that integrate considerations of the State use of National Guard personnel...Participating in Joint Staff capability-based planning and assessments...and DoD planning, programming, budgeting, and execution process...pertaining to National Guard capabilities, including...defense support of civil authorities.

#### Discussion

CNGB is not a commander of NG personnel. CNGB is responsible for the organization and operations of the NGB and supervises the NGB's functions as **the channel of communications** on National Guard matters between the DoD, DA, and DAF, and the States. NGB consists of the Office of the CNGB, NG Joint Staff, Office of the DARNG, and Office of the DANG. NGB is the focal point at the strategic level for non-federalized National Guard matters that are not the responsibility of the SecAR, SecAF, or the CJCS, in law or DoD policy. NGB is the channel of communications on all matters pertaining to the NG between DA and DAF with the States. NGB is normally the channel of communications on all matters pertaining to the NG between the SecDef, CJCS, DoD components other than DA and DAF with the States. The DARNG and DANG assist CNGB in carrying out the functions of NGB.

NGB has many statutory functions, including, but not limited to:

- (a) Implements DoD, DA, and DAF guidance on the structure, strength authorizations, and other resources of the ARNGUS and the ANGUS.
- (b) Prescribes the training discipline and training requirements for the ARNG and the ANG, and the allocation of federal funds for the training of the ARNG and ANG.

- (c) Ensures that units and members of the ARNG and the ANG are trained by the States, in accordance with approved policies and programs of the SecAR and SecAF.
- (d) Monitors and assists the States in the organization, maintenance, and operation of NG units to provide well-trained and well-equipped units capable of augmenting the active forces
- (e) Plans, programs, and administers the budgets of the ARNGUS and ANGUS.
- (f) Grants and withdraws, in accordance with applicable laws and regulations, federal recognition of units and officers of the NG.
- (g) Establishes policies and programs for the employment and use of NG technicians.
- (h) Supervises and administers the Active Guard and Reserve program as it pertains to the NG, in accordance with priorities and procedures established by the SecAR and the SecAF.

Pursuant to DoDD 5105.77, and consistent with SecDef, SecAR, SecAF, and CJCS policies, the CNGB also administers such joint programs and functions as necessary to effectively integrate National Guard resources and capabilities into DoD joint functions, as well as supervises the acquisition and supply of, and accountability of the States for, federal property issued to the NG through the property and fiscal officers, among other functions.

NGB is a joint activity of the DoD and falls under “other DoD Component” for purposes of applicability of regulations IAW DoDD 5100.01. NGB is not a Defense Agency or DoD Field Activity.

Key References:

- a) 10 U.S.C. §§ 10501-10508, *National Guard Bureau*
- b) DoDD 5100.01, *Functions of the Department of Defense and Its Major Component*, 21 December 2010
- c) DoDD 5105.77, *National Guard Bureau*, 30 October 2015
- d) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

## National Guard Bureau Joint Operations Center (NGCC) and Adaptive Battle Staff (ABS)

Topic: What are the responsibilities of the NGCC and ABS?

### Guidance

The National Guard Bureau Joint Operations Center is a 24/7 communication node that serves as the NGB's primary conduit of information on domestic operations by the non-federalized National Guard, between the JFHQ-State and Federal levels. It uses an Adaptive Battle Staff (ABS) construct to increase manning structure during increases in operational levels.

The ABS consists of subject-matter experts from across NGB staffs who augment the NGCC's structure and manning as the center's operational level increases. The augmented staff in the NGCC ensures a single reporting system and allows for more effective and efficient sourcing of requirements during increased operational levels.

### Discussion

The NGCC functions as primary communications node and focal point for situational awareness of ongoing and anticipated domestic operational events and activities involving the National Guard in a non-federalized status. At the national level, it operates as an interface between the NGB and the JFHQ-State's JOC. The NGCC is the National Guard's primary national hub for continuously monitoring situational awareness and it is the primary coordination node to optimize non-federalized National Guard support for domestic operations. The NGCC also provides NGB leadership with information necessary to make critical management decisions related to National Guard forces and it informs DoD and other federal agencies of developing crises in which the National Guard is involved. The NGCC facilitates the processing of requests for assistance and information on non-federalized National Guard domestic support, and it supports the planning and synchronization of capabilities to source current and future domestic operational requirements.

The NGCC activates the ABS as directed. The ABS is designed to enhance staff collaboration and synchronization efforts during domestic crisis. The ABS builds Shared Situational Awareness (SSA) in support of OSD, the Joint Chiefs of Staff (JCS), Combatant Commands and JFHQs during domestic incidents and planned events to improve coordination and SSA in support of CNGB's advisory role as a member of the JCS and as a channel of communication between TAGs and national mission partners.

Although the NGB is not a headquarters, NGB ABS is similar in design to USNORTHCOM's battle staff. Activation levels mirror DHS and FEMA methodology for increasing and decreasing staffing requirements. The ABS operational level and staffing are tailored and scaled to the anticipated magnitude and scope of the incident and request for civil support:

- Level 3 - Steady State / Routine Operations (Normal duty hours)
- Level 2 - Elevated State / Durational (Normal duty hours to extended)
- Level 1 - Crisis State / Full Adaptive Battle Staff (24/7)

Key References:

- a) NGB Natural Hazards Playbook
- b) CNGBI 3000.01A, *Joint Liaison Teams*, 30 September 2019
- c) CNGBI 3000.02, *Adaptive Battle Staff*, 08 June 2018

## Joint Liaison Teams (JLT)

Topic: What is the NGB JLT?

### Guidance

It is NGB policy to provide liaison between the CNGB and supported NG Joint Force Headquarters–State (NG JFHQs-State) and interagency partners during domestic operations, designated National Special Security Events, and national exercises using JLT assets and capabilities. JLTs will be deployed under the authority of the CNGB to ensure shared situational awareness across responding entities and to support specific information requirements of the CNGB.

Per DoDD 5105.77 and DoDD 3025.18, the CNGB assists the SecDef in facilitating and coordinating with COCOM Commanders of USNORTHCOM and USINDOPACOM, other Federal agencies, and TAGs in the use of NG personnel and resources for missions conducted under State control. The NGB coordinates with USNORTHCOM, USINDOPACOM, and the NG JFHQs-State to facilitate the integration and synchronization of Homeland Defense (HD) and Defense Support of Civil Authorities (DSCA)/NG Civil Support and associated planning.

Part of the All-Hazards Support Plan includes NGB JLTs who can deploy to provide on-site support to requesting States and territories during an event.

### Discussion

The NGB JLT provides liaison support to requesting States during domestic operations, which includes natural or man-made incidents, National Special Security Events (NSSE), and major exercises. JLTs deploy to affected States to satisfy CNGB's responsibilities. The JLT establishes a link between the supported State(s) and the National Guard Coordination Center (NGCC), allowing members of a State's NG JOC to remain focused on their primary mission. The NGCC relays RFIs, RFAs, and reports from the JLTs to the appropriate NGB action officers and senior leadership.

Augmentees to NGB JLT teams will be brought on under ADOS-RC (10 U.S.C. § 12301(d)) orders. The NGB JLT operates under NGB authorities and has Title 10 duties like other NGB personnel. JLTs act, in part, as eyes and ears on the ground for CNGB, and are designed to support NGB functions/duties (including those listed in 10 U.S.C. § 10503). They are distinguishable from the State personnel flowing in under mutual aid and assistance agreements, such as EMACs, to perform the States' direct disaster response missions.

If NGB requests augmentees from the States for the NGB JLT mission, those augmentees should be brought on Title 10 orders to perform the same mission as the rest of the NGB JLT team. States providing staff augmentation to NGB's enhanced Joint Liaison Teams (eJLTs) will use Title 10 duty status and funding to ensure appropriate alignment of their activities to NGB's statutory and administrative responsibilities. Augmenting states should submit requests for funding code and duty status to NGB through the NGCC.



Per CNGBI 1301.01A, it is NGB policy that members assigned to the NGB execute Federal responsibilities and serve within a Federal chain of command. All military members normally assigned to perform duty on behalf of the NGB will be ordered to active duty on Title 10 orders with missions or functions pursuant to the programmatic authorities of DoDD 5105.77 or relevant service guidance. In each of these cases, the order to active duty is under 10 U.S.C. §§ 12301(d), 12310, 12402.

This policy applies to permanent change of station or temporary duty status assignments to the NGB. Adherence to this policy will ensure that members are serving in the appropriate command and control status and eligible to receive the benefits and protections dependent on the performance of active duty while utilizing the correct appropriation authority.

Performing duty at the NGB in a Title 32 status is authorized only for training to perform a temporary advisory function, or to represent the member's State in support of a special project of limited duration. These duties should never include management supervision, command, or direction of Title 10 military personnel, Title 5 civilian employees, or contractor personnel performing the work of the NGB.

The determination of whether an exception to the Title 10 would apply should be made based on individual facts in consultation with the G/A/J/ 1 and 3, along with TAG.

#### Key References:

- a) DoDD 5105.77, *National Guard Bureau*, 30 October 2015
- b) CNGB 5200.01, *NGB All Hazards Support Plan (AHSP)*, 03 February 2017
- c) NGB Natural Hazards Playbook
- d) CNGBI 1301.01A, *Military Duty Status for National Guard Members Assigned to The National Guard Bureau*, 21 July 2017
- e) CNGBI 3000.01A, *Joint Liaison Teams*, 30 September 2019

## CBRN Response Enterprise (CRE)

Topic: What are the duties and responsibilities of the CRE?

### Guidance

The CRE cover the elements of State and Federal response to a chemical, biological, radiological, or nuclear incidents. Elements assigned to the State NG are:

Weapons of Mass Destruction-Civil Support Teams (WMD-CSTs);  
Chemical, Biological, Radiological, Nuclear and Explosives (CBRNE) Enhanced Response Force Package (CERFPs); and  
Homeland Response Forces (HRFs)

Elements allocated to USNORTHCOM are:

JTF-CS (Defense CBRN Response Force or DCRF); and  
Command and Control CBRN Response Element (C2CREs)

### Discussion

The NG CRE elements identify and mitigate CBRN agents and toxins. Specially trained and certified NG personnel conduct initial assessments of CBRN events and provide consequence management support as required by civil authorities.

WMD-CST support civil authorities at a domestic incident site during specified events, which include: the use or threatened use of WMD, terrorist attacks or threatened terrorist attacks, an intentional or unintentional release of nuclear, biological, radiological, or toxic or poisonous chemicals, and natural or man-made disasters in the United States that result, or could result, in the catastrophic loss of life or property by identifying hazards, assessing current and projected consequences, advising on response measures, and assisting with appropriate requests for additional support.

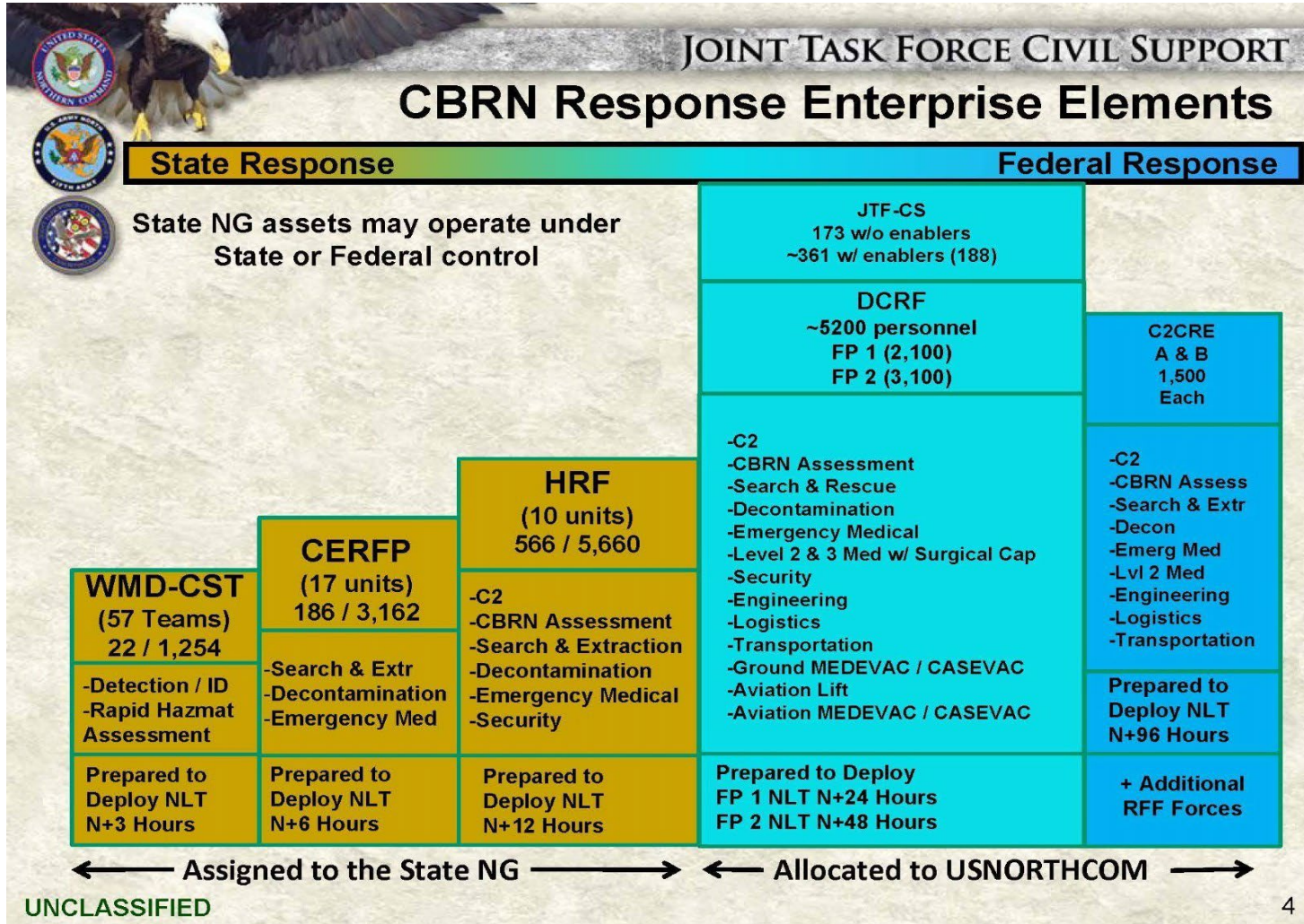
HRFs are comprised of a mix of FTNGD and SAD personnel. Use of Title 32 HRF personnel is authorized pursuant to the following limitations: 1) Title 32 HRF may be used in accordance with current orders. The purpose of the FTNGD personnel is to maintain HRF readiness in order for the HRF to meet its variable scaled timelines; 2) Title 32 HRF may be used to support IRA activities; and 3) Non AGR Title 32 HRF may be placed on SAD orders to support State Mission. HRF personnel in 32 U.S.C. § 502(f) FTNGD-OS may NOT deploy out-of-state for non-primary HRF purposes. They must break orders and go in SAD or other § 502(f) orders IAW CNGBI 1302.01. This does not apply to: Title 32 CD, Title 32 AGR, Title 32 WMD-CST.

### Key References:

- a) CNGBI 3501.00A, *Weapons of Mass Destruction Civil Support Team Management*, 29 April 2022
- b) CNGBI 3510.01A, *National Guard Chemical, Biological, Radiological, and Nuclear Response Management*, 08 March 2021

- c) CNGBM 3510.01, National Guard Homeland Response Force and Chemical, Biological, Radiological, Nuclear, and High-Yield Explosives Enhanced Response Force Package Procedures, 25 August 2016
- d) NGB All Hazards Support Plan (AHSP)

e)



## Weapons of Mass Destruction-Civil Support Teams

Topic: What are the duties and limitations of WMD-CST personnel? For what purpose may WMD-CSTs be utilized?

### Guidance

The duties of the WMD-CST personnel are governed by 10 U.S.C. § 12310(c). No other duty is authorized for WMD-CSTs. WMD-CST duty is restricted to the United States, which in this statute includes, Guam, Puerto Rico, and the U.S. Virgin Islands.

Per 10 U.S.C. § 12310(c) and CNGBI 3501.00, a Reservist who is a member of the National Guard serving on full-time National Guard duty under 32 U.S.C. § 502(f), may, while assigned to a reserve component weapons of mass destruction civil support team, perform duties in support of emergency preparedness programs to prepare for or to respond to any emergency involving any of the following: The use or threatened use of a weapon of mass destruction in the United States, a terrorist attack or threatened terrorist attack in the United States that results, or could result, in catastrophic loss of life or property, the intentional or unintentional release of nuclear, biological, radiological, or toxic or poisonous chemical materials in the United States that results, or could result, in catastrophic loss of life or property, and a natural or manmade disaster in the United States that results in, or could result in, catastrophic loss of life or property.

### Discussion

WMD-CST personnel are a unique kind of AGR servicemember performing duties outside those found in 32 U.S.C. § 328. While in this duty status, WMD-CST personnel may only perform duties within the United States and should only be utilized for the purposes and missions identified in statute and regulation, absent exigent circumstances, i.e., very limited duties under immediate response authority (IRA). Commanders should be well briefed by their CST personnel in order to fully understand the capabilities and limitations of this crucial asset. In the event of the limited need for IRA, WMD-CSTs should be used as a last resort and then relieved as soon as possible. Certain CST expenditures are made with specific MDEPs limiting the use of those resources to the purpose clarified within.

The WMD-CSTs will deploy to a State directed mission, to an interstate mission request, as part of the Response Management Plan (RMP) activation, or in response to a Presidential call-up. Governors are the employment authority for WMD-CST missions executed in a T32 status. This authority may be delegated to the TAG. The President may also call NG forces into Federal service for domestic duties under T10. If a local, tribal, State or Federal agency finds itself overwhelmed by an event or if it requires the unique capabilities provided by the WMD-CST, it may request WMD-CST support. Mission requests must be validated by the Governor or designee, unless it is an emergency response mission. The mission must fall within the WMD-CST mission limits, and to validate a mission, TAG or designee must consider and answer the following questions: Was the request received from and in support of civil authorities?; Does the request have enough information to task the CST?; Is the mission legally and ethically sound?; Is the mission appropriate and feasible for the use of CSTs?; and, Does the CST have the means to support the mission?

Key References:

- a) 10 U.S.C. § 12310(c), *Reserves: for Organizing, Administering, etc., Reserve Components*
- b) CNGBI 3501.00A, *Weapons of Mass Destruction – Civil Support Team Management*, 29 April 2022
- c) CNGBM 3501.00, *Weapons of Mass Destruction – Civil Support Team Management*, 10 January 2020

## NG Homeland Defense and Homeland Security Activities

Topic: What are allowable NG Homeland Defense and Security activities that may be funded with federal funds under Title 32?

### Guidance

Per 32 U.S.C. § 902, SecDef may provide funds to a Governor to employ NG units or members to conduct homeland defense activities that the Secretary, determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be.

Per 32 U.S.C. § 901, the term “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 SecDef as being critical to national security, from a threat or aggression against the United States.

Per 32 U.S.C. § 904, all duty performed under this chapter shall be considered to be full-time NG duty under 32 U.S.C. §502(f).

Per 32 U.S.C. § 906, a Governor may request funding assistance for the homeland defense activities of the NG of that State from SecDef. Any such request shall include: the specific intended homeland defense activities, an explanation of why participation of NG in the homeland defense activities is necessary and appropriate, and a certification that homeland defense activities are to be conducted at a time when the personnel involved are not in Federal service.

NG Homeland Defense operations are conducted in the air, land, maritime, and space domains and in the information environment. DoD is the primary federal agency for Homeland Defense, supported by other agencies. On order of the President or SecDef, NG units may be called to defend the Homeland against external threats. Certain NG units have been assigned roles in support of Homeland Defense missions. The general focus of NG Homeland Defense missions is deterring and detecting external threats to the Homeland. Homeland Defense missions are typically conducted in Title 10. Training and preparations for Homeland Defense missions may be conducted in Title 32.

### Discussion

Domestic operations have been requested in the past to be performed under the authority of Chapter 9 of Title 32 but such activities are very limited and no requests has been approved to date. HD activities consist only of “military protection” of “territory, populace or infrastructure under an “external threat” determined by SecDef himself to be “critical” to the entire nation. Chapter 9 activities should not be viewed as a NG sourcing solution. Any use or request for use of this authority should be well staffed with NGB before any formal action is taken.

### Key References:

- a) 32 U.S.C. Chapter 9, *Homeland Defense Activities*

- b) DoDD 3160.01, *Homeland Defense Activities Conducted by The National Guard*, 25 August 2008, Incorporating change 2, 6 June 2017
- c) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

## Continuity of Operations (COOP)

Topic: What is the NG's COOP responsibilities?

### Guidance

Continuity of Operations is an effort within individual organizations, such as the National Guard Bureau, to ensure that Component mission-essential functions continue to be performed during a wide range of emergencies, including localized acts of nature, accidents, and technological or attack-related emergencies.

### Discussion

It is DoD policy to maintain comprehensive and effective continuity capabilities within the DoD to ensure the uninterrupted execution of mission-essential functions and support continuity of operations, continuity of government, and enduring constitutional government.

If an event is triggered, the Emergency Response Group, which consists of selected individuals of an organization's staff, is prepared to move to designated relocation facilities and perform mission-essential functions in response to emergencies or contingencies that threaten the organization's operations.

### Key References:

- a) DoDD 3020.26, *Department of Defense Continuity Programs*, 9 January 2009
- b) CNGBI 3202.01A, *National Guard Continuity Program*, 22 April 2019



## 7. The Adjutants General DSCA Responsibilities

Topic: What are the DSCA duties and responsibilities for TAGs?

### Guidance

In addition to many overall duties, TAGs have several specific DSCA duties:

- Exercises the command authority of the Governor over state National Guard units and personnel within their jurisdiction, in accordance with applicable state laws.
- Typically serves, in accordance with state law, as the principal advisor to the Governor on military matters.
- Supports the CNGB in his/her advisory role to senior leaders of the Department of Defense and other federal agencies.
- Supports the SecDef and the CNGB in their requirement to prepare an annual plan for the military response to natural disasters, acts of terrorism, and other man-made disasters by gathering and submitting required information from their respective state or territory.
- Maintains the training and readiness of their assigned personnel to conduct all assigned state and federal missions.
- Complies with the reporting requirements needed for DSCA.
- Prepares and submits plans for National Guard domestic operations.
- Supports the CNGB in his/her role as the channel of communications between the several states and the SecDef 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.

### Discussion

TAGs are the commanders, and in almost all cases, the ultimate authority for non-federalized NG personnel within a state. They are vital in the proper performance of and complete accounting for DSCA. When operating in SAD they answer almost exclusively to the Governors, subject to property accountability, reimbursement standards and applicable state and federal law. The TAGs are key to ensuring the situational awareness needed by the NGCC to enable the CNGB to perform his duties as advisor on the non-federalized NG. Additionally, TAGs must ensure adherence to applicable statutes and regulations as mandated. In certain states, TAG is not only the Chief Military Officer, but may serve as a Senior Executive in Emergency Services as well. It is imperative that TAGs authorized these types of responsibilities perform each duty singularly making sure to adhere to applicable standards when performing their NG related functions.

Key Reference:

- a) CNGBI 3000.04, *National Guard Bureau Domestic Operations*, 24 January 2018

## District of Columbia National Guard (DCNG)

Topic: How does DCNG execute DSCA/DOMOPS?

As the seat of the federal government, the District of Columbia was originally created as a federal enclave under the exclusive control of the federal government. Today, the District of Columbia has no Governor and continues to operate as a federal district; albeit, it has an elected mayor and a city council that has limited power to pass local laws, subject to review by Congress. Congress continues to reserve the right to amend, repeal, or enact any law in force in the District.

The DCNG was formally established in 1802, under the command of the President who was authorized by Congress to form a militia from citizen-soldiers in Virginia and Maryland. The primary mission of the DCNG is to provide mission-ready personnel and units for active duty in the armed services in the time of war or national emergency. The DCNG also retains the mission as protector of the District of Columbia.

### Discussion

**C2.** IAW D.C. Code § 49-409 passed by Congress, POTUS is at all times the Commander-in-Chief of the DCNG. E.O. 11485 delegated Presidential authority to command, supervise, administer, and control the DCNG in a militia status to SecDef. Pursuant to Secretary of Defense Memorandum “Supervision and Control of the National Guard of the District of Columbia,” 10 October 1969, the SecDef further delegated this authority to SecAR as it pertains to the DCARNG and to SecAF as it pertains to the DCANG. The Secretaries exercise this authority through the Commanding General of the DCNG rather than through an Adjutant General. The Commanding General of the DCNG is appointed by the President. An officer appointed to serve as the Commanding General must be Federally recognized by the Senate in a general officer grade.

In accordance with the October 10, 1969, memorandum from SecDef to the Secretaries of the Army and Air Force, whenever the DCARNG or DCANG are used in militia status to support civil authorities, the Secretary of the Army, through the Commanding General, exercises operational command over the Army and Air National Guard elements.

The Mayor of the District of Columbia has no formal command authority over the DCNG. As a matter of practice, however, whenever the Mayor desires civil support from the DCNG, the Mayor submits a request to the Commanding General of the DCNG, who notifies SecAR. Pursuant to E.O. 11485, the LE policies to be used by DCNG military forces when aiding the civil authority of the District are established by consultation between the DoD and the Attorney General.

The 1969 memorandum was later modified by Secretary of Defense Memorandum “Authority to Approve District of Columbia Government Requests for District of Columbia National Guard Support Assistance,” 30 December 2021. The SecDef must approve requests (1) if DCNG personnel are to be deployed within 48 hours after receipt of a request, **or** (2) the support requested would involve DCNG personnel in direct participation in civilian law enforcement

activities (e.g., crowd control, traffic control, search, seizure, arrest, or temporary detention). The SecAR retains approval authority for requests more than 48 hours in advance, if such support does not involve direct participation in civilian law enforcement activities.

If support to LE anticipates the exercise of LE-like functions, the Mayor would designate members of the DCNG as special police (or “special privates”) pursuant to D.C. Code § 5-129.03. This provision of the law allows the Mayor, upon “any emergency of riot, pestilence, invasion, insurrection, or during any day of public election, ceremony, or celebration” to appoint from among the citizens “special privates without pay,” who while so serving possess the powers and privileges, and perform the duties of a District of Columbia Metropolitan Police Officer. Historically, this special status has been conferred upon DCNG and other National Guard personnel in support of Presidential Inaugurations. Title 32 orders issued to DCNG personnel include authority to act under the provisions of Title 5 of the D.C. Code but remain under the command and control of their superior military officers at all times. The Commanding General of the DCNG and the Chief of the District of Columbia Metropolitan Police Department coordinate their respective command structures and personnel with a view towards maximizing unity of effort.

**Deputation.** The CG, DCNG, has tasking authority over all out-of-state NG units provided for this mission. All out-of-state NG personnel will adhere to the DCNG Rules for the Use of Force (RUF). Out-of-state NG personnel may have been deputized under one of several authorities, and must follow the limitations established by the supporting agency (D.C. MPD, U.S. Park Police (USPP), and/or the U.S. Marshal Service (USMS)). There are three identified authorities for deputizing NG personnel: (1) D.C. Code § 5-129.03, appointment as special police by the D.C. Mayor or the Chief of the MPD; (2) D.C. Code § 5-205, appointment as special police by the Director, National Park Service; and (3) 28 U.S.C. § 566 and 28 CFR § 0.112, special deputation as a Deputy U.S. Marshal by the Associate Attorney General or the Director, USMS.

**Posse Comitatus Act.** Although the chain-of-command of the DCNG runs through the Department of Defense to the President, the applicability of the proscriptions of the Posse Comitatus Act (PCA), 18 U.S.C. § 1385, bears comment. Applicability of the PCA depends on the status of the service-member. For instance, if the service-member is serving in a Title 10 status, then the member is considered part of the active component Army or Air Force for PCA purposes and therefore subject to the PCA’s prohibition on participation in the execution of civil laws. Conversely, if the service-member is in a Title 32 status, the member is not considered part of the active component Army or Air Force and thus not subject to PCA restrictions. Whether in a Title 10 or Title 32 status, all members of the DCNG must comply with all applicable Department of Defense directives and instructions.

**Federalized Status.** Historically, the DCNG has been mobilized in a Federalized status on limited occasions. Pursuant to 10 U.S.C. § 12301, the DCNG has been Federalized in support of operations such as Operations Desert Storm, Desert Shield, Enduring Freedom, Iraqi Freedom, and Noble Eagle. In addition, the Insurrection Act was employed to order the DCNG into active Federal service to complement Federal forces deployed to quell the disorder associated with the rioting that ensued after the death of Dr. Martin Luther King in April 1968.

**EMAC.** For purposes of EMAC, the DC government is treated like a State and the Mayor is authorized to execute EMACs on behalf of DC pursuant to D.C. Code § 7–2332. However, the DCNG is considered a federal agency and operates under the command and control of POTUS/SECDEF as part of the DOD, not the DC government. It is therefore a Federal instrumentality and not eligible for deployment under EMAC. However, the DC government could send resources, which are under its control (i.e., DC Metropolitan Police, DC Fire and EMS).

In contrast, DC government, as a party to EMAC, could receive other State’s resources, including their NG in SAD, to assist DC government. A civilian official in the Emergency Management Office, acting on behalf of the Mayor, requests other state SAD forces to augment DCNG. If this occurs, DC government is responsible for reimbursement to those States through EMAC. CG and SECARMY can communicate needs to DCHSEMA and inform as to what resources should be requested, but neither actually enters the EMAC on behalf of DC.

This is distinct from a DC government DSCA RFA to the DOD or DOD support to NSSEs or other Federal missions which occur within DC and where DC government is an indirect beneficiary of an otherwise Federal mission.

#### Key References:

- a) U.S. Constitution, Art. I, § 8, cl. 17
- b) *Assumption Act*, Sec. 13, 3 May 1802
- c) Exec. Order No. 11485, 34 Fed. Reg. 15411, 1 October 1969
- d) Melvin P. Laird, Memorandum for Secretary of the Army, Secretary of the Air Force, SUBJECT: Supervision and Control of the National Guard of the District of Columbia, 10 October 1969.
- e) Pub. L. 93-198, *District of Columbia Home Rule Act*, 1973
- f) D.C. Code, Title 49, 2018
- g) D.C. Code, Title 5
- h) DODI 5525.13, *Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments*, 28 September 2007

## 8. Rules for the Use of Force (RUF)

### NG Domestic Operations Rules for Use of Force (RUF)

Topic: How are the RUF applied in a DSCA/DOMOPS environment?

#### Guidance

NGR 500-5, Section 4-4. The CJCS Rules of Engagement/Rules for the Use of Force generally do not apply to NG personnel conducting domestic support missions unless in a Title 10 status. NG personnel follow State RUF when in a Title 32 or SAD status.

Use of force by members of the NG in SAD or under Title 32 are governed by state law, usually criminal law. The State J3 develops the RUF in coordination with the SJA. RUF varies 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 Title 10 RUF are based on DoD and CJCS promulgations which do not apply to NG personnel in a state status during a NG domestic support operation.

States that provide NG personnel in SAD or Title 32 to another state normally will adopt the RUF of the supported state while deployed to the supported state. Before deployment, States involved will determine which RUF the supporting units and personnel will follow.

Consider the following when drafting state RUF for NG law enforcement, law enforcement support, or security missions conducted in SAD or Title 32: (1) the right of self-defense; (2) the level of force required; (3) options such as the use of face shields, vests, batons, nonlethal weapons, and arming personnel; (4) instructions on the use of weapons; (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, and (8) 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. 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. See NGR 500-5, Section 4-4 (g) for more information on six phases of the force continuum. This list is advisory, not directive or regulatory by National Guard Regulation.

Failure to provide RUF or train National Guard members in the RUF 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. Failure to comply with the RUF may result in criminal prosecution.

#### Discussion

States should maintain a steady state RUF to cover emergency events. Each state's Domestic Operations Plan should have a RUF annex or incorporate the steady state RUF as applicable. Additionally, consult the state SJA for the RUF applicable to each specific National Guard

domestic operations mission. Each specific steady state mission, (e.g., counter-drug, WMD-CST, etc.) has specific applicable RUF. RUF should be designed in concert with the Operations Section. Judge Advocates should be involved in all phases of a National Guard law enforcement support operation as the legal environment during such operations is a complex environment.

Key Reference:

- a) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2010

## Non-Lethal Weapon Sets

Topic: What are the standards for the use of Non-Lethal Weapon Sets?

### Guidance

Per NGR 500-5, the National Guard has established nonlethal capabilities to assist civilian authorities. Each state's TAG, in conjunction with the state's Governor and Attorney General, must ultimately determine if state National Guard personnel will utilize nonlethal capabilities during domestic operations. TAGs 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.

Proper storage and security of all nonlethal capability equipment is a priority. 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 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), followed by unit leaders, unit members, and then unit collective training. Subsequent annual refresher training is required.

Each of the several states should develop nonlethal capability training plans. Training requirements for the nonlethal capability sets of equipment are outlined in FM 3-22.40. Additional training support information may be found in TC 3-19.5. INIWIC is the only formal DoD nonlethal weapons "train-the-trainer" course. States will ensure that all nonlethal training is conducted by INIWIC certified nonlethal instructors.

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. Consequence Management Support Center is the logistical hub for the receipt, storage and distribution of nonlethal equipment.

### Discussion

Nonlethal capabilities are employed with the intent to compel or deter adversaries while minimizing fatalities and damage to equipment or facilities. They do however, present risk of serious injury and death and must be utilized with great restraint. 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. States should review their RUF to ensure that they address inclusion of nonlethal capabilities. RUF development should be a joint effort by the state's SJA and state's attorney general, with concurrence from the state Governor and Adjutant General.

Key Reference:

- a) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2010



## 9. Contracts and Fiscal Law

### USPFOs Responsibilities

Topic: What are the USPFO's duties and responsibilities?

#### Guidance

The National Guard's "United States Property and Fiscal Officers" (USPFO) play an important role within the National Guard. They are Title 10 officers in each state (typically O-6s) who are responsible and liable for all federal property and funding in the possession of their state's National Guard. The position is established in statute at 32 U.S.C. § 708 with DoD-level regulatory implementation at DoDI 1200.18. The USPFOs are part of the NGB staff and are rated by the Vice Chief of the National Guard Bureau. The USPFOs lead offices that are comprised of mostly Title 32 personnel who are charged with ensuring that all federal funds and equipment are utilized in accordance with all laws and regulations. These offices include federally warranted contracting officers, grants officer representatives, logisticians, budget analysts, property book officers, internal review, and data base administrators.

Per CNGBI 9501.01, USPFOs have a dual responsibility with regard to their working relationships with the CNGB and their TAG... USPFOs work for and are responsible to the CNGB to ensure that all applicable laws, regulations, policies, and procedures established by Congress, DoD, DA, and DAF, as implemented by the CNGB, are complied with in their State. USPFOs work directly with TAGs to support the mission, programs, and priorities within the limits established by applicable laws and regulations.

Since DSCA missions are typically performed by NG in SAD, the USPFO is not the primary resourcing solution for SAD mission needs. Rather, the state military departments are typically the primary resourcing solution. During a SAD mission, the USPFOs ensure that federal property is used properly and the USPFOs track the use of federal equipment (e.g., vehicles and helicopters) that are used by the state military departments to ensure that the appropriate reimbursement is sought for that usage.

#### Discussion

USPFOs bear the responsibility of accounting for the federal property and funding in the possession of their State's NG. Their position is defined by a statute and implemented in regulation. Their oversight responsibilities are shaped by the complex statutory and regulatory structure of contracts and fiscal law. USPFO duties and responsibilities are carried out by full-time staff assigned directly under the USPFO's daily supervision, and by Assistant USPFOs who are primarily accountable to the USPFO for fiscal, property, and real property matters. Agreements to use federal equipment and property may be contained in a Master Cooperative Agreement.

USPFOs represent the CNGB in each state in matters relating to federal funding and property. In light of their significant responsibilities, it is essential that the USPFOs have access to timely and accurate operational information on all State operations.

On June 19, 2020, SecDef issued a memo prohibiting non-reimbursable support of any nature to other Federal, State, Territorial, Tribal, or local government entities; private groups and organizations; foreign governments; and international organizations (collectively, non-DoD entity or entities), unless such support is required by statute or if discretionary non-reimbursable support is authorized but not required by statute. Such support: (1) is authorized by the DoD Joint Ethics Regulation or DoD Public Affairs guidance; or (2) is provided after approval of an exception process. Exceptions may only be approved by the Secretary of Defense, the Deputy Secretary of Defense, the Chief Management Officer (if authorized by existing DoD policy), the Secretaries of the Military Departments (if authorized by existing DoD policy), and the Under Secretaries of Defense (if authorized by existing DoD policy). Approval authority is not further delegable. The Chief of the National Guard Bureau submits exception requests through the CJCS.

Key References:

- a) 32 U.S.C. § 708, *Property and Fiscal Officers*
- b) DoDI 1200.18, *The United States Property and Fiscal Officer (USPFO) Program*, 7 June 2012
- c) *National Guard Fiscal Law Guidebook*, 2019
- d) CNGBI 9501.01, *National Guard Bureau United States Property and Fiscal Officer Program*, 8 July 2021
- e) CNGBM 9501.01, *National Guard Bureau United States Property and Fiscal Officer Program Procedural Guidance*, 9 August 2022
- f) Memorandum, *Secretary of Defense: Reimbursable Activities in Support of Other Entities*, 19 June 2020

## Fundamentals of Fiscal Law

Topic: What are the considerations to be aware of when spending federally provided appropriated funds?

### Guidance

U.S. Constitution, Art. I, § 9, provides that “[N]o Money shall be drawn from the Treasury but in Consequence of Appropriations made by Law.”

*United States v. MacCollom*, 426 U.S. 317 (1976). “The established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress.”

31 U.S.C. § 1301. The “Purpose Statute” requires agencies to apply appropriations only to the objects for which the appropriations were made, except as otherwise provided by law.

GAO developed a “necessary expense doctrine” to assist federal officials when an expenditure is not specifically provided for in an appropriation. A three-part test asks whether the proposed expenditure (1) bears a logical relationship to the appropriation sought to be charged, (2) is prohibited by law, or (3) is provided for in a separate appropriation or statutory funding scheme.

31 U.S.C. § 1502(a). Appropriations are available only for the bona fide need of an appropriation’s period of availability. GAO Principles of Federal Appropriations Law (Red Book), Third Edition, Vol I. “Fiscal Year”. The Federal Government’s fiscal year begins on 1 October and ends on 30 September.

GAO Principles of Federal Appropriations Law (Red Book), Third Edition, Vol I. “Period of Availability”. Defines the period of time in which funds are available for original obligation. If activities do not obligate the funds during the period of availability, the funds expire and are generally unavailable thereafter for new obligations.

GAO Principles of Federal Appropriations Law (Red Book), Third Edition, Vol I. “Obligation”. An obligation is any act that legally binds the government to make payment.

31 U.S.C. § 1341(a)(1)(B). An obligation cannot be incurred in advance of an appropriation, unless authorized by law. There are limited exceptions.

31 U.S.C. § 1342. You may not accept voluntary services, unless otherwise authorized by law. There are limited exceptions.

### Discussion

Appropriated funds may only be used for the purpose for which the appropriations were made. The “necessary expense doctrine” is key to this analysis. The use of personnel, vehicles, and equipment are considered expenditures. An agency may only obligate funds within the time limits applicable to the appropriation (e.g., O&M funds are available for obligation for one fiscal

year). Some exceptions apply, but generally funds may only be spent within the FY they are provided, and only for expenses that accrue during that fiscal year. For any fiscal law issue, such as using current funds for a future need (next FY), consult with the USPFO to confirm that rules are followed or an exception applies. An Anti-deficiency Act (ADA) violation may occur when fiscal laws are violated.

Key References:

- a) Title 31 U.S.C. , Chapter 13, *Appropriations*
- b) *The Judge Advocate General's Legal Center and School Fiscal Law Deskbook*, 2022
- c) *National Guard Fiscal Law Guidebook*, 2019
- d) *United States General Accounting Office, Principles of Federal Appropriations Law, 3<sup>rd</sup> Additions, Volume 1*, January 2004
- e) 426 U.S. 317, *United States v. MacCollom*, 1976
- f) 31 U.S.C. § 1301, *Application*
- g) 31 U.S.C. § 1341, *Limitations on expending and obligating amounts*
- h) 31 U.S.C. § 1342, *Limitation on Voluntary Services*

Fundamentals of Contract Law

Topic: What are the considerations an agency should be aware of when contracting for goods and services?

## Guidance

The Federal Acquisition Regulation (FAR) covers all federal contracting actions and is comprised of 52 separate “Parts,” codified in Title 48 of the CFR. All statutes that affect contracting are implemented into the FAR. DoD further implements DoD-specific contracting regulation in the Defense FAR Supplement (DFARS) and the Services have further implementation in the Army and AF FAR Supplement (AFARS and AFFARS). The FAR, DFARS, AFARS and AFFARS are the primary sources of regulatory guidance concerning all Guard procurements. Although the NG is comprised of the Army and Air National Guards, its contracting authority flows from the Army, so all NG contracting falls under the Army’s rules. Contracting officers (and attorneys) are required to ensure that a proposed contracting action is IAW the FAR.

The Competition in Contracting Act of 1984 (CICA) 10 U.S.C. § 2304 apply Standards of Conduct principles of competition, transparency, integrity, and fairness to government contracting. FAR § 3.101.

FAR 6.101 requires opening the procurement process to the maximum extent practicable in order to allow all capable contractors who want to do business with the Government an equal opportunity to compete. Contracting officers shall provide for Full and Open competition to solicit offers and awards for all government contracts unless they can justify using (a) full and open competition after exclusion of sources (FAR 6.2), or (b) other than full and open competition (FAR 6.3).

FAR 6.302 there are seven statutory exceptions that allow for competition that is less than Full and Open. (i.e. only one source, unusual or compelling urgency, national security, public interest, international agreement, required by statute, industrial mobilization.) A lack of advance planning will not trigger these exceptions.

An “unfair competitive advantage” arises when suppliers are not treated equally. Examples include suppliers who are given different guidelines, instructions, information, or time to prepare proposals. Providing different rules or evaluation criteria to a contractor in order to ensure they either win a proposal or lose a proposal is illegal under the Procurement Integrity Act (41 U.S.C. § 2101).

FAR Part 18 covers “emergency acquisitions” which sets out additional flexibilities for emergency acquisitions, which typically requires head of agency approval.

Per 15 U.S.C. §§ 631-650 Socioeconomic policies that provide exceptions to the principles of competition based on a contractor’s socioeconomic status may be allowable.

## Discussion

In federal contracting, the warranted contracting officer is the primary official responsible for ensuring that all contracting actions comply with the FAR. Attorneys and JAs support the contracting officer by providing compliance reviews and assisting the contracting officer(s) with any legal questions that arise in a particular contracting situation. When planning for contractor support military planners should consider that contracts can fail for a large number of reasons with little or no advance warning. Critical aspects of your operations should be routinely evaluated for over-reliance on contractors. If a critical mission or capability will fail without contractors, then you should begin taking steps to mitigate the over-reliance. Some services are considered Inherently Governmental and are not appropriate for contractors. The Request for Service Contract Approval Form is designed to highlight the above risks and prohibitions when contracting for services.

Key References:

- a) Title 43 CFR, “Federal Acquisition Regulation System”
- b) *The Judge Advocate General’s Legal Center and School Fiscal Law Deskbook, 2022*
- c) *The Judge Advocate General’s Legal Center and School Contract Attorney Deskbook, 2022*
- d) *National Guard Fiscal Law Guidebook, 2019*

## Use of Federal Arms

Topic: What are the guidelines for the arming NG troops with federally supplied weapons and ammo?

### Guidance

Per 32 U.S.C. § 702, the service Secretaries may buy or manufacture and, upon requisition of the Governor of any State, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty. The primary authority for federal supplied equipment rests with CNGB per DoDD 5105.77 exercised through the USPFOs 32 U.S.C. § 708.

Per NGR 500-5/ANGI 10-208, Para. 5-5c. 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.

The state is liable for reimbursement to the Federal Government through the USPFO when federal property is used by National Guard personnel in SAD, 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, and (3) Incremental costs attributed to direct mission support. Equipment reimbursement costs are specified in AR 700-131 for the use of ARNG equipment and in DAFMAN 23-119 for use of ANG equipment. See NGR 500-5, par. 10-2c.

AR 700-131 Chapter 4 establishes that though Loans or leases of arms and accouterments to civilian activities require special processing and handling, loans or leases to DoD and non-DoD activities will be handled as a normal loan or lease according to instructions in this chapter with certain added requirements.

Regarding ammunition, AR 5-13, Para. 2-4 identifies Operational Load as a commander's daily operating requirements. They include munitions that Army units require to support or conduct a broad range of day-to-day operational missions; for example, installation EOD, SRT operations, ceremonies, and quarry operations, guard force missions, force protection, SOF, pre-deployment site surveys, and so forth. OPLOAD munitions required to support Army daily operating requirements (e.g., guard personnel, ceremonies, EOD mission support, SOF site surveys, and so forth).

Per NGR 500-5/ANGI 10-208, Para. 5-6, the only weapons authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 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 is ammunition issued through the military supply system.

Per AR 700-131, Para. 4–2, The Army may only loan arms and accouterments to civilian authorities and to civilian activities in the following instances: (1) For use by Federal agencies or departments in protection of public money and property (10 U.S.C. § 4655); and (2) Obsolete or condemned rifles, slings, and cartridge belts may be loaned to local units of any national veteran’s organization for use by that unit in ceremonies.

## Discussion

State NGs may use small arms and operational load ammo in SAD. However, they will need to reimburse DoD for the use of small arms and ammo. Any small arms and ammo expended, lost, destroyed, cost of maintenance, etc. will need to be repaired/replaced by the state to bring their stocks of these federally-owned supplies back up to the level it was at before they were used. AR 700-131, Chapter 5 stipulates the reimbursement policies to ensure no additional cost to DoD for the loan and lease of small arms and accoutrements.

Operational Load requirements must be submitted to NGB for the following FY by the end of second week of March of the current FY. NGB receives authorizations at the TA4C based on the reported valid requirements, supply availability, and usage history. Operational Load is managed in TAMIS similar to Training Ammo. Operational ammo for State Active Duty missions is drawn and stored for extended periods of time (multi-year) within a unit vault or ASP. Requirements must be reviewed by USPFO for QRF type units annually. Currently, authorizations are for one Fiscal Year.

The use of all arms and ammunition must be accomplished with great restraint and must include the provision of and training on an applicable RUF. Commanders should consult with their USPFO, Provost Marshall, and JA before issuing arms and ammunition.

### Key References:

- a) DoDI 1225.06, *Equipping the Reserve Forces*, 1 June 2023
- b) DAFMAN 23-119, *Government Furnished Property*, 6 April 2022
- c) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2010
- d) AR 700-131, *Loan, Lease, Donation of Army Materiel*, 23 August 2004
- e) AR 5-13, *Total Army Munitions Requirements and Prioritization Policy*, 31 March 2021



## Use of Durable Property

Topic: What are the guidelines for the loan/use of (non-lethal) federal NG Property by state agencies?

### Guidance

Per 32 U.S.C. § 702, the service Secretaries may buy or manufacture and, upon requisition of the Governor of any State, issue to its Army National Guard and Air National Guard, respectively, the supplies necessary to uniform, arm, and equip that Army National Guard or Air National Guard for field duty.

Per NGR 500-5/ANGI 10-208, as Commanders in Chief, Governors can directly access and utilize the National Guard's federally assigned aircraft, vehicles, and other equipment (subject to federal law and regulation) so long as the Federal Government is reimbursed for the use of the equipment and supplies.

Per NGR 500-5/ANGI 10-208, Para. 5-5c, 5-5c, for the purposes of state active duty missions 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.

The state is liable for reimbursement to the Federal Government through the USPFO when federal property is used by National Guard personnel in SAD, 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. Equipment reimbursement costs are specified in AR 700-131 for the use of ARNG equipment and in DAFMAN 23-119 for use of ANG equipment.

10 U.S.C. § 2667 authorizes the lease of Army materiel to non-DoD elements or individuals when it is determined that the materiel is not, for the period of the lease, needed for public use or excess property and that the lease will promote the national defense or be in the public interest (see AR 360-1). Leases to civilian non-Federal law enforcement agencies will be made when the use have been determined to promote national defense or to be in the public interest. Leases of military equipment will not be made for which a counterpart exists on the commercial marketplace and is reasonably available for purchase or lease.

AR 700-131 Chapter 4 establishes that Loans or leases of arms and accouterments to civilian entities require special processing and handling. Loans or leases to DoD and non-DoD activities will be handled as a normal loan or lease according to instructions in this chapter with certain added requirements.

AR 700–131, Para. 2-6 states that lease of Active Army and State ARNG-owned military equipment to civilian authorities (other than arms, combat/tactical vehicles, vessels and aircraft) for less than 180 days is approved by the...State AG (ARNG equipment). It also provides that the State AG may approve the use of medical equipment for less than 180 days.

Per AR 700–131 para. 2–9 loan or lease agreements are required. Upon approval of a DA Form 4881–6 (Request and Approval for Loan or Lease and Loan or Lease Agreement) and before shipment or issue of the materiel, the approving authority will direct that a written agreement be completed. In all cases, the statutory basis for the loan or lease will be cited.

Per AR 700–131, Para. 2–10, the lessee shall assume the risk of loss or liability for damage to the leased property. That risk shall be covered either by insurance or the posting of a surety bond on the depreciated value of the equipment being leased ...

Per AR 700-131, Para. 4–2, the Army may only loan arms and accouterments to civilian authorities and to civilian activities in the following instances: (1) For use by Federal agencies or departments in protection of public money and property (10 U.S.C. § 4655) and (2) Obsolete or condemned rifles, slings, and cartridge belts may be loaned to local units of any national veteran’s organization for use by that unit in ceremonies.

Per AFI 10-801, Para. 3.5. (AF Reimbursement in DSCA Operations), reimbursement is required when equipment or services are provided to agencies outside DoD.

Per NGR 500-5, Para. 5-5 The National Guard may loan or lease equipment to LEAs.... 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. 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.

Per AR 700-131, Para. 2-8, Equipment may be leased to civilian, non-Federal law enforcement agencies for purposes other than civil disturbances. However, any requests to assist law enforcement agencies that will result in a planned event with the potential for confrontation with named individuals/groups or use of lethal force must be forwarded to the SecDef for approval. Note also that ammunition is an expendable item, cannot be leased to non-Federal agencies.

DoDI 3025.21, 4.A. (4) (a) requests for arms, ammunition, combat vehicles, vessels, and aircraft must be submitted to the SecDef for approval.

## Discussion

There is no specific external legislation or policy conveying authority for the use of federal equipment and property by State governments. The relevant active component regulations discussing reimbursement costs are AR 700-131 and DAFMAN 23-119.

General Guidance. The types of consumable federal support to SAD is generally limited to (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. State use of federally supplied equipment may not degrade unit readiness or reduce unit training. All use is subject to reimbursement when such is made necessary through property consumption or alternatively repairable degradation. In certain cases, TAGs may approve the provision of non-lethal property to outside state agencies.

Loan of Lethal Property. In the cases of lethal property approval is for loan outside the NG is limited to the Service Secretaries or the designees. As many property lend/lease needs are immediate, states should not plan on utilizing lethal property through their state NGs but should use other state agencies (i.e., LEAs) as a sourcing solution for lethal property requirements (such a method will also help prevent potential litigation and administrative burdens.)

Medical property. Federal resources, such as medical equipment and supplies, cannot be given directly to civilian hospitals or NGOs absent authority. However, as stated in NGR 500-5, para 5-5, federally-owned equipment such as PPE can be used by a TAG for a SAD mission on a reimbursable basis. Once those federal resources are provided to a State or Territory under SAD, the use of those resources or equipment by the State and Territory is a question of that particular State and Territory's internal laws/policy on the use of the State resources.

Before lending equipment to outside agencies commanders are advised to consult their JAs and their USPFOS before making any commitments.

#### Key References:

- a) DoDI 1225.06, *Equipping the Reserve Forces*, 16 May 2012, Incorporating Change 2, 28 June 2022
- b) DoDI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, 27 February 2013, Incorporating Change 1, 3 February 2019
- c) DAFMAN 23-119, *Government Furnished Property*, 6 April 2022
- d) AR 700-131, *Loan, Lease, Donation of Army Materiel*, 23 August 2004
- e) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2010

### Tactical & Non-Tactical Vehicles

Topic: Are there limits on using tactical and non-tactical vehicles?

#### Guidance

DoDI 3025.21, 4.A. (4) (a) requests for arms, ammunition, combat vehicles, vessels, and aircraft must be submitted to the SecDef for approval.

Per NGR 500-5/ANGI 10-208, as Commanders in Chief, Governors can directly access and utilize NG federally assigned...vehicles, (subject to some restrictions based on federal law and regulation) on a reimbursable basis for the use of the equipment and supplies.

Per NGR 500-5, Para. 5-5 TAGs, with concurrence of the USPFO, have authority to loan equipment with the exception of potentially lethal equipment support. The loan of ... combat and tactical vehicles requires approval from the service secretaries or their designee. Requests for loan or lease requiring service secretary approval will be reviewed by NGB. (3) Loans and leases of equipment are governed by AR 58-1, AR 700-131, and DAFMAN 23-119. TAGs have authority to use federal property issued to the NG of their state during periods of civil disturbance and other emergency conditions declared by the Governor.

Per AR 700-131, Para. 2-8, equipment may be leased to civilian, non-Federal LEA for purposes other than civil disturbances. However, any requests to assist law enforcement agencies that will result in a planned event with the potential for confrontation with named individuals/groups or use of lethal force must be forwarded to the SecDef for approval. Note also that ammunition is an expendable item, cannot be leased to non-Federal agencies.

AR 58-1, Ch. 8-2. Interagency support provides that Army NTV may be furnished for short periods (less than 2 months) to other Government agencies only when the Army mission will not be impaired, and the use is for one of the following missions:

(1) Of an emergency, lifesaving nature; (2) Authorized by Federal statute or directive; (3) In direct support of the Defense mission; (4) In the national interest, as certified by the head of an executive department or independent Government office or agency. Justification for providing Army NTV will include a statement that commercial sources are either not available or cannot satisfy the requirement. Reimbursement will be required unless waived by the Secretary of the Army or the Assistant Secretary of the Army (Financial Management and Comptroller). The amount will cover total costs incurred. Unfunded costs for military personnel and equipment depreciation allowances are excluded. NTVs will not be provided without prior coordinated with HQDA (DALO-TSP), except, in purview of the Installation Commander, when time is of the essence and precludes prior coordination.

Per AFI 10-801, in circumstances not immediately threatening to human life, human suffering, or great property damage, requests for equipment and base and research facilities may be made available to federal, state, or local civilian officials to include law enforcement IAW DAFMAN 23-119 and AFI 32-9003.

## Discussion

State NGs may use their federally supplied equipment for state-directed missions. Such use may not degrade unit readiness and is subject to reimbursement. This concept applies to the use of both non-tactical (formerly called GSA vehicles) and tactical vehicles for NG personnel performing state missions. Tactical vehicles may not be provided to other state agencies absent eventual Service Secretary approval through NGB.

Emergency provision of tactical vehicles to state LEAs should not be planned on as definitive sourcing solution. It should be remembered that the option of placing a state NG member qualified to operate the vehicle (potentially one who is a LEA officer in their civilian status), in SAD and having them operate a ground vehicle in support of state law enforcement would preclude the needs for any kind of lease/ loan and obliterate any training requirements needed by the LEA to operate the vehicle.

GSA vehicles leased by the ARNG are only available for SAD purposes on a non-interference basis and when used for IRA situations, in direct support of a FEMA MA, or when determined to be in the national interest with a justification that includes a statement that commercial sources are either not available or cannot satisfy the requirement. Reimbursement is required (AR 58-1, Sec. 8-2). However, States and Territories can and should lease vehicles for their own use directly from GSA or procure a similar non-tactical vehicles from the commercial marketplace using State and Territory procurement systems. Every State and Territory has a GSA leased vehicles account and uses the GSA leased vehicle program for vehicles in their state or territory that are independent from the ARNG fleet.

Be aware that GSA offers short term leases for vehicles as well for as little as a week or up to multiple years. Unfamiliarity at the state and territory level with how to procure a leased vehicle through GSA is not a reason for the State or Territory to use ARNG NTVs in a non-emergency situation. GSA can typically source vehicles for states and territories within 24 hours for vehicles they have in inventory.

Before lending equipment commanders are advised to consult their JAs and USPFOs.

### Key References:

- a) DoDI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, 27 February 2013, Incorporating Change 1, 3 February 2019
- b) AFI 10-801, *Defense Support of Civil Authorities*, 29 January 2020
- c) NGR 500-5/ANGI 10-208, *National Guard Domestic Law Enforcement Support and Mission Assurance Operations*, 18 August 2010
- d) AR 58-1, *Management, Acquisition, and Use of Motor Vehicles*, 27 January 2003
- e) AR 700-131, *Loan, Lease, Donation of Army Materiel*, 23 August 2004

## 10. MILAIR

### Reimbursable Use of ARNG Aircraft

Topic: What types of missions using ARNG aircraft require reimbursement? What criteria must be met before and after performing these missions? What are the exceptions to required reimbursable uses of ARNG aircraft or requirements to process a waiver for reimbursement for use of ARNG aircraft?

#### Guidance

The following types of missions using ARNG aircraft require reimbursement: (1) Supporting civil authorities whose capabilities or capacity is insufficient to meet current requirements with general purpose, specialized, or unique NG personnel or capabilities such as aviation support; (2) protecting the life, property, and safety of U.S. citizens and U.S. persons; (3) protecting critical U.S. infrastructure; (4) providing humanitarian assistance during disaster response and domestic emergencies; (5) providing support to National Special Security Events (NSSE), programs, and other activities; and (6) providing support to designated law enforcement activities and operations. In order to perform these missions, the request for assistance must be pursuant to DSCA, the Stafford Act, or the Economy Act. The exceptions that allow for a waiver are contained in NG PAM 95-5, Para 1-4 and 10-4.

NG PAM 95-5, Para. 10-1, When approved in advance by proper authority, support missions may be flown in a federally-funded status for other than ARNG purposes to support the following users on a reimbursable basis:

- (1) DoD agencies (i.e. active Army or Army Reserve; or other DoD Services (USAF, USN, USMC));
- (2) Federal agencies (FEMA, Environmental Protection Agency (EPA), Congress, etc.);
- (3) Foreign Military Sales (FMS) cases;
- (4) all other users (public agencies, Community-Based Organizations [CBOs], etc.); and
- (5) SAD

Per NGR 5-2, and NG PAM 95-5, missions requested by Active Army or USAR units (intra-service) will be billed for reimbursement of direct costs (Petroleum, Oil and Lubricants [POL], Depot-Level Repairs (DLRs), and consumables.

Additionally, missions requested by other DoD agencies (inter-service support) will be billed for reimbursement at the full DoD user rate, published annually by the Army ASA Financial Management and Comptroller (FM&C) and posted on GKO. Prior to providing ARNG aircraft mission intra-service or inter-service support to DoD agencies, a DD Form 1144, support agreement between the ARNG and the supported DoD agency must be completed.

ARNG aircraft use in support of non-DoD Federal agencies, FMS cases, and all other users requires a written agreement with the supported activity, and a separate written determination that (1) funding is available to pay for the support; (2) the requested support would be in the best interest of the Government; (3) the ARNG is capable of providing the support; (4) the support cannot be provided as conveniently or cheaply by a commercial enterprise; and (5) it does not conflict with any other agency's authority. Reimbursement charges for ARNG aircraft support to

non-DoD Federal activities shall be assessed the same way as reimbursement charges are determined for other DoD activities.

IAW 42 U.S.C. §5121 [Stafford Act]; 31 U.S.C. §9701, and DoDD 3025.18, States must reimburse the U.S. Treasury for all requests for use of ARNG aircraft in DSCA related missions. Support may be provided on a non-reimbursable basis only if required by law or authorized by law and approved by the appropriate DoD official.

NG PAM 95-5, Para. 10-2, When ARNG aircraft are used in SAD *immediate response* missions to save lives, limbs, or eyesight, prevent human suffering, or mitigate great property damage under imminently serious conditions, reimbursement of the costs shall be made to the Federal Government at the SAD Emergency Rate

For ARNG aircraft used to support a non-emergency State mission, the States shall reimburse the Federal Government at the SAD Non-Emergency rate.

Unless approved by NGB to be conducted in Title 32, the State shall reimburse the Federal Government for the cost associated with supporting the State and Local civil law enforcement operations (CLEO) at the SAD non-emergency reimbursable rate.

Per NG PAM 95-5, Para. 10-3c, requested transportation for members of Congress or their staff on ARNG aircraft at the invitation of the State TAG or Governor for official duty travel connected with the NG or other DoD activities in and between CONUS, Puerto Rico, Guam, the U.S. Virgin Islands or the States of Alaska or Hawaii requires no reimbursement if approved through NGB-LL to OCLL for the SECARMY.

Per NG PAM 95-5, Para. 10-4b, except where required by law, exceptions to required reimbursements may only be granted by ARNG-AV when aircraft was previously scheduled to perform a bona fide training mission, the minimum training mission requirements are not exceeded, and there is no additional cost to the Government. MILAIR must not be scheduled for training missions for the primary purpose of accommodating other agencies without reimbursement.

To ensure waiver reimbursements are properly staffed and validated, ARNG-AV (or OSAA for FW missions) will only consider requests for waiver from the SAAO that have been endorsed by the State USPFO, the State JFHQ Legal Counsel, and the State Adjutant General.

## Discussion

NG PAM 95-5 requires costs associated with missions flown using ARNG aircraft in a federally-funded status for non-ARNG mission purposes to be reimbursed. The USPFO is required by law to seek reimbursement for non-ARNG mission related support provided to the State, DoD, Federal, and other non-governmental organizations (NGOs) for crediting to the appropriate ARNG fund accounts; or process a request for waiver of reimbursement through the State JA, the State Adjutant General and staffed through ARNG-AV or OSAA for approval.

Key References:

- a) 42 U.S.C., Chapter 68, Subchapter IV, *Major Disaster Assistance Programs*
- b) DoDI 4000.19, *Support Agreements*, 16 December 2020
- c) NGR 5-2, *National Guard Support Agreements*, 14 October 2010
- d) National Guard Pamphlet 95-5, *Use of Army National Guard Aircraft*, 4 November 2011
- e) 42 U.S.C. § 5121, *Congressional Finding and declarations [Stafford Act]*
- f) 31 U.S.C. § 9701, *User Charge Statute*
- g) DoDD 3025.18, *Defense Support of Civil Authorities*, 29 December 2010, Incorporating Change 2, 19 March 2018



### Reimbursable Use of ANG Aircraft

Topic: What types of missions using ANG aircraft require reimbursement? What criteria must be met before and after performing these missions? What are the exceptions to required reimbursable uses of ANG aircraft or requirements to process a waiver for reimbursement for use of ANG aircraft?

#### Guidance

The following types of missions using ANG aircraft require reimbursement: direct support of non-military activities such as civil relief, mercy missions, health, communications, public works, and others contributing to the economic and social well-being of the state and nation. These missions may include aerial firefighting, hurricane, tornado and flood relief, or EMAC supported disaster relief, declared emergencies or civil disturbance operations. In order to perform these missions, the following criteria must be met: (1) AF tasked – the call for airlift assistance will be made from a state Joint Operations Center (JOC) or a federal agency i.e., FEMA or (2) ANG coordinated – the unit is tasked directly by their state headquarters. The ANG Crisis Action Team may expedite the tasking process by coordinating requirements with available resources.

Per ANGI 11-101, Paras. 6, 10 and 16.1, sorties (missions) may be flown in a federally-funded status for other than ANG purposes to support the following users on a reimbursable basis when approved in advance by proper authority:

- (1) DoD agencies (i.e. active Air Force or AF Reserve; or other DoD Services (USA, USN, USMC));
- (2) Federal agencies (FEMA, EPA, Congress, etc.);
- (3) Foreign Military Sales (FMS) cases;
- (4) all other users (public agencies, Community-Based Organizations [CBOs], etc.); and
- (5) SAD

Per ANGI 11-101, Paras. 10 and 16.1, the ANG flying hour program is budgeted and allocated hour funding: direct O&M (aircrew training), indirect O&M (flying hours funded by external DoD and non-DoD Federal agencies; Transportation Working Capital Fund (TWCF)-hours flown funded in support of TACC tasked airlift missions; and Overseas Contingency Operations (OCO)-hours flown in direct support of HHQ tasked operational missions.

Per ANGI 11-101, Para. 6, annual flying-hour requirements are established by the ANG unit's Flying Hour Work Group (FHWG), forwarded for program and budgeting, annually funded and allocated in four categories of flying hours: O&M (Training); Transportation Working Capital Fund (TWCF) Airlift; Overseas Contingency Operations (OCO) and Reimbursable Flying Hours. ANG aircraft flying hours flown in support of intra and inter-service operations and other DoD agency operations are programmed, budgeted, and allocated and approved by Higher Headquarters (HHQs) as funded reimbursable costs.

Per ANGI 11-101, Para. 1.2.2, units may utilize ANG O&M training flying hours for positioning and repositioning for Domestic Emergency Response within the 54 states and territories. T-4 mission based on Domestic Emergency Response will be executed within the wing flying hour allocation using reimbursable O&M flying hours. Para 10.3, when ANG aircraft is used to support a non-contingency exercise, the flying hours will be considered O&M or TWCF, but if participating and receiving training, the flying hours funding should be charged from the unit O&M training allocation.

IAW DoDD3025.18, AFI 65-601V1, Para. 7.29, and ANGI 11-101, Para. 12, for purposes of State and Federal directed domestic operations in support of civil authorities, the request for AF tasked airlift assistance missions will be made from a state JOC or a Federal agency (i.e. FEMA), who may in turn contact AMC Tanker Airlift Control Center (TACC). TACC will then contact the ANG unit and the mission will be flown as a TWCF airlift mission.

ANGI 11-101, para. 12.1.1.2, ANG flying units directed by their State headquarters to execute ANG coordinated missions ISO State or Federal civil authority during domestic operations will fly missions utilizing unit O&M training hours. Dependent upon the authorities, tasking and scenario, units will work with NGB to ensure billing and reimbursement is accomplished with the supported state. For properly coded/approved missions, with assistance of the wing, NGB will seek reimbursement from the tasking agency based upon official rates published by DoD annually.

Per AFI 10-801 para. 1.2.2. and 2.10.2, officials may direct an *immediate response* using ANG aircraft and personnel serving in SAD or Title 32 and IAW State law to save lives, prevent human suffering or mitigate property damage within the United States, but see DoDD 3025.18, para. 4.d., that they must seek reimbursement at the earliest opportunity. Per AFI 11-102, para. 1.3, the ANG Director of Operations (NGB/A3) is responsible for processing any reimbursement exception, reimbursement waiver requests as the office of primary responsibility for the Air Force Single Flying Hour Model (AFSFHM) program.

## Discussion

NG PAM 95-5 requires costs associated with missions flown using ANG aircraft in a federally-funded status for non-ANG mission purposes to be reimbursed. The USPFO is required by law to seek reimbursement for non-ANG mission related support provided to the State, DoD, Federal, and other non-governmental organizations (NGOs) for crediting to the appropriate ANG fund account; or process a request for waiver of reimbursement through the State JA, the State Adjutant General and staffed through NGB/A3 for approval.

Key References:

- a) DoDD 4500.56, *DoD Policy on the Use of Government Aircraft and Air Travel*, 14 April 2009, Incorporating Change 5, Effective 3 April 2019
- b) AFI 10-801, *Defense Support of Civil Authorities*, 29 January 2020
- c) AFI 11-102, *Flying Operations – Flying Hour Program Management*, 8 December 2020
- d) National Guard Pamphlet 95-5, *Use of Army National Guard Aircraft*, 4 November 2011
- e) ANGI 11-101, *Flying Operations – Flying Hour Management*, 23 December 2020
- f) DoDD 3025.18, *Defense Support of Civil Authorities*, 29 December 2010, Incorporating Change 2, 19 March 2018
- g) AFI 65-601, Volume 1, *Budget Guidance and Procedures*, 22 June 2022

## 11. Military Aircraft Passenger Eligibility

Topic: Who is an eligible passenger on National Guard aircraft?

### Guidance

Per DoDI 4515.13, eligible passengers include Uniformed Service Members; DoD civilians; Command-sponsored dependents/family members; non-command sponsored dependents; dependents accompanying DoD personnel on official business; employees and dependents of NAF activities; employees of other USG agencies; nonprofit service organizations; invited travelers; foreign nationals; contractors pursuant to a contractual requirement; educators; athletes/entertainers; civil air patrol; ROTC/JROTC; International ROTC; NG Youth Challenge program participants; Naval sea cadets; persons transported under MEJA; civilians not affiliated with the DoD under limited circumstances; patients/medical attendants/nonmedical attendants related to aeromedical evacuation; news media; passengers related to public affairs; and orientation flight passengers.

DoDI 4515.13, Sec 10 contains requirements for transport of service animals, pets, and other animals.

Per DoDI 4515.13, numerous individual conditions for each category of passenger exist and are listed in the regulation. These conditions must be met before a passenger is deemed eligible for travel aboard DoD aircraft; generally, eligible passengers must have documentation showing their travel aboard DoD aircraft has been approved and the travel must be for an official purpose.

Per DoDI 4515.13, Sec 12, exceptions to passenger transportation eligibility requirements must meet specific criteria and be approved by CNGB pursuant to a formal written request by the organization requesting transportation.

Per DoD 4515.13; NG Pam 95-5; and AFI 11-401 ANG Supplement, in addition to the conditions that must be met for each category of eligible passengers, use of tactical aircraft (both ANG and ARNG) have additional requirements that must be satisfied in order for an individual to participate in a familiarization or orientation flight using such aircraft. CNGB, or authorized designee, is the authority responsible for monitoring and controlling such flights utilizing NG tactical aircraft.

### Discussion

Government aircraft is a premium mode of travel involving high costs and limited resources. Commanders shall make every effort to minimize government aircraft cost to satisfy the mission requirement. Violating travel regulation may subject Commanders to serious consequences including, among other things, investigation, sanctions, reprimand and liability for reimbursement to the government. Additionally, ineligible passengers may not receive the same coverage benefits as eligible passengers in the event of mishaps during travel. If the travel request requires CNGB approval ensure that the request submitted to NGB contains sufficient information and consult with your State SJA and State Aviation Officer before making any air movement commitments.

Key References:

- a) DoDI 4500.56, *Use of Government Aircraft and Air Travel*, 20 May 2024,
- b) DoDI 4515.13, *Air Transportation Eligibility*, 22 January 2016, Incorporating Changes 5, Effective 5, 23 October 2020
- c) DoDI 4500.43, *Operational Support Airlift (OSA)*, 18 May 2011, Incorporating Change 4, 5 June 2020
- d) *Office of Management and Budget Circular No. A-126*, 22 May 1992
- e) National Guard Pamphlet 95-5, *Use of Army National Guard Aircraft*, 4 November 2011
- f) AFI 11-401 ANG Supplement, *Aviation Management*, 26 November 2022, Certified Current 18 April 2017

## Flyovers and Aerial Demonstration

Topic: When can National Guard aircraft perform Flyovers and other Aerial Demonstrations?

### Guidance

The NG can perform flyovers and aerial demonstrations. Per DoDI 5410.19-V4, section 6, to limit interference with the operations and training of aviation units, and to set reasonable limits for their use, approval is required from the Secretaries of the Military Departments for flyovers at the following events: Civilian-sponsored formal observances, open to the public, of Armed Forces Day Memorial Day, Independence Day, POW/MIA Recognition Day and Veterans Day; Aviation-related events; Ceremonies honoring foreign dignitaries; Events held on a military installation; ROTC or Military Service Academy graduation ceremonies; Inaugural ceremonies of Governors when flown by State National Guard resources with a previously scheduled training mission and at no additional cost to the Government.

Per 2.1.f, the ASD(PA) may grant exceptions to the policies and procedures in DoDI 5410.19-V4

Per 6.2.d. Flyovers, including the missing man formation, at private memorial or funeral services in honor of rated or designated active-duty aviation personnel and dignitaries of the Military Services or the Federal Government, as determined by the Military Departments, are not community relations activities. In those cases, appropriateness of a flyover shall be determined by the Military Services.

As a general policy, the ANG has determined that “aerial events are conducted with aircraft on a volunteer basis, are intended to connect with the American public, support Air Force recruiting and retention efforts, showcase American air power, and enhance community and international relations.” Per DAFI 11-209, Flyovers for the following activities are allowable subject to applicable regulations, Patriotic Holiday, Retirement/Change of Command Ceremony, Funeral or Memorial Flyovers, and Missing Man Formation. Participation approval is normally at the MAJCOM level (generally DANG for ANG). In certain cases, retirement change of command and patriotic holidays, aerial demonstrations can take place in lieu of flyovers pending MAJCOM approval.

Per NG PAM 95-5, para 8-10, in order to conserve aviation resources to meet operational and pre-deployment training requirements, current Army policy prohibits all Army National guard aircraft from conducting public affairs missions involving aerial demonstrations in the civilian domain. Flyovers (except for Gubernatorial Inaugurations and Funeral/Memorial Flyovers) are prohibited aerial demonstrations.

Per section 8-12, Exceptions to Policy for aerial demonstrations and other restricted activities currently in effect by HQDA will be granted only in rare circumstances for exceptional high-impact events that meet specific strategic communication requirements and must be approved by the Vice Chief of Staff (USA).

Following coordination with the SAAO, Exceptions to Policy will be initiated by the State JFHQ PAO, through the Chief, Community Relations Division, NGB-PA to the Office of the Vice Chief of Staff.

## Discussion

Pursuant to regulation and flight regulations (DoDI 5410.19-V4), ANG allows for the performance of a selected number of flyovers and aerial events, largely military or patriotic related events, subject to approval. Outside of those allowances USAF aviation support planned for a public or military event must receive additional MAJCOM, HQ USAF/A3O, and SAF/PA approval before the performance. Based on the complexity of the allowances within the regulations and the need for multiple waivers for events, preplanning is required to garner necessary approvals or to make alternative sourcing decisions.

Generally, flyovers and other such demonstrations are prohibited by Army NG Aviation regulations, only very limited exceptions are allowed. Under certain circumstances waivers to the prohibition may be requested. Waiver authority is often held at higher levels and as such sufficient time for processing of such waiver is a critical component of mission planning. It should also be noted that under the regulations the threshold for such waivers is rather high. As a result, alternative sourcing solutions should be developed, planned for, and resourced. The use of NG aircraft for flyovers while in SAD is not addressed and is presumed allowable; subject to personnel being placed in SAD and subject to all reimbursement requirements.

### Key References:

- a) DoDI 5410.19-V4, Community Outreach Activities: Ceremonial, Musical, and Aerial Event Support
- b) DAFI 11-209, *Flying Operations – Participation in Aerial Events*, 20 May 2021
- c) ANGI 10-201, *Air Transportation*, 24 April 2017, Certified current as of 28 April 2020
- d) National Guard Pamphlet 95-5, *Use of Army National Guard Aircraft*, 4 November 2011

## 12. NG Support to Fire Fighting

Topic: What are the requirements for the use of the NG to assist federal agencies in fighting wildfires?

### Guidance

Generally, the NG can be used to assist federal agencies in fighting wildfires if the support is pursuant to a validated RFA. State and local governments have primary responsibility to prevent and control wildfires. Normally, as part of the efforts of state and local governments to prevent and control wildfires, NG personnel respond in SAD. The National Interagency Fire Center (NIFC) is the primary federal entity responsible for coordinating the federal response to wildfire and is a joint DOI and USDA operation. DoD policy is to provide emergency assistance to federal agencies by personnel, equipment, supplies, or fire protection service in cases where a fire emergency is beyond the capabilities of available resources. DoD provides reimbursable support pursuant to MOU between DoD, NGB, USDA and DOI.

The ANG uses USFS-owned Modular Airborne Fire Fighting System (MAFFS), when requested, to assist with wildland firefighting during extreme conditions. Congress established the MAFFS Program in the early 1970s as a wildland fire program, not a military program, to provide emergency capability to supplement the existing commercial air tanker support on wildfires. NIFC activates the MAFFS when all other contract air tankers are committed or are otherwise unable to meet requests for air operations. The request for MAFFS activation is approved by the national MAFFS liaison officer, who is the USFS director at NIFC. This request is then formally submitted to JDOMS. Governors of states where NG MAFFS units are stationed may activate MAFFS missions within their state boundaries when covered by MOU with the USFS. IAW military requirements for initial qualification and recurrent training, MAFFS crews are trained every year with Forest Service national aviation operations personnel.

The mobilization of MAFFS resources requires a pre-deployment analysis. Prior to deployment, local foresters are responsible for ensuring that regional, commercially available assets are unavailable or already committed to a mission. If assets are sought by the NICC, commercial assets must be unavailable at the national level. Payments are governed by the appropriate MOU–Collection Agreements between military and Forestry Service.

Per DoD 3025.1-M, prior to service members being committed to firefighting (ground) it is mandatory that they receive NIFC training. A team from NIFC will travel to the Agency providing troops and conduct orientation training, "cold line" fire training, "mop-up" training, and fireline training. Before fireline assignment, military personnel used for firefighting receive mandatory basic fire training to include introductory fire behavior, fire shelter, and standards for survival. Once the Agency Chief of Party and the military commander agree that the personnel are properly trained and equipped, they may be assigned to hot fireline assignments. Equipment for firefighting is provided by NIFC.

### Discussion

Section 1856a of Title 42 authorizes each agency head charged with the duty of providing fire protection for any property of the United States to enter into a reciprocal agreement, with any



fire organization maintaining fire protection facilities in the vicinity of such property, for mutual aid in furnishing fire protection for such property and for other property for which such organization normally provides fire protection. It is DoD policy to, when called upon and approved by the appropriate authority, make DoD fire and emergency services (F&ES) capabilities available to assist civil authorities under mutual aid agreements, host nation support agreements, and DSCA.

Crews supporting firefighting efforts must be in the proper duty status for the mission they are performing for FTCA “scope of employment” and benefits coverage. Military technicians should be operating within their technician position description or on a non-interference basis, or in Title 32 military status. Ground personnel fighting wildfires generally perform duties in SAD.

Key References:

- a) 42 U.S.C. § 1856a
- b) DoDI 6055.06, *DoD Fire and Emergency Services (F&ES) Program*, 3 October 2019
- c) DoDD 3025.18, *Defense Support of Civil Authorities*, 29 December 2010, Incorporating Change 2, 19 March 2018

## 13. Privacy Act

### Privacy Act of 1974 and Personally Identifiable Information Breaches

Topic: What is the Privacy Act?

#### Guidance

The Privacy Act (PA) of 1974, 5 U.S.C. § 552a, as amended, establishes a code of fair information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. It covers all records that are “about” individuals that are also filed and/or retrieved by the individual’s name or other unique identifier (SSN, other identifier, phone number, etc.).

This law guarantees three primary rights:

1. The right to see records about oneself the government maintains in a system of records, subject to the PA’s exemptions;
2. The right to amend a nonexempt record if it is inaccurate, irrelevant, untimely, or incomplete; and,
3. The right to sue the government for violations of the statute, such as permitting unauthorized individuals to read other’s records.

Agency Requirements. The PA has a number of baseline requirements that must be complied with before establishing and maintaining a system of records concerning individuals, and with limited exception all requirements must be met before the system may operate:

1. Maintain only information on individuals relevant and necessary to accomplish a DoD mission.
2. Collect information, to the greatest extent possible.
3. Inform the individual of the purpose for collecting information, the uses that will be made outside of DoD, and the effects of not providing the information.
4. Publish a System of Records Notice in the Federal Register before collecting information.
5. Maintain accurate, relevant, timely, and complete records.
6. Do not maintain records describing an individual’s exercise of First Amendment rights, unless authorized by law or the individual concerned.
7. Establish rules of conduct in the handling of PA records.
8. Establish appropriate safeguards to ensure the security and confidentiality of records.
9. Publish any intended changes such as types of information collected or location of records in the Federal Register PA System Notice for public notice and comment.

Disclosure to third parties. The Privacy Act prohibits disclosure of a person’s record without their consent subject to 12 exceptions. The most common exceptions used by the DoD are disclosures to DoD employees that have a ‘need to know’ the information in the performance of their official duties, certain disclosures required by FOIA, disclosures to the head of a law enforcement agency (when requested in writing), and disclosures pursuant to a court of competent jurisdiction. Disclosures outside of the agency, with the exception of disclosures required by FOIA, must be accounted for in the person’s record.

Violations. The Privacy Act provides both civil and criminal penalties that can be imposed on agency employees for violations. Individuals can also seek civil remedies in a civil cause of action.

Breaches of Personally Identifiable Information (PII). The OMB requires breaches, including suspected breaches, of PII be reported. The DD 2959 must be completed and sent to NGB.Privacy@mail.mil within 24 hours of discovery of a PII breach to meet the 48-hour reporting requirement to DoD.

## Discussion

It is critical to ensure compliance with the Privacy Act and related Privacy legislation and regulatory guidance prior to collecting or maintaining information on individuals. Key components include providing a proper Privacy Act Statement, ensuring a System of Records Notice is published in the Federal Register and/or a Privacy Impact, ensuring proper protection of records, ensuring records are not disclosed to third parties without the subject's consent, unless one of the exceptions apply, and ensuring all records maintained are accurate, relevant to accomplishing a federal mission, and timely.

**Important Note:** State employees are not covered under the (b)(1) Routine Use (Disclosure within DoD) and it would be a PA violation and PII Breach for them to access Federal Records covered by a System of Records Notice.

OMB Memorandum M-17-12 defines a breach as “the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information or (2) an authorized user accesses or potentially accesses personally identifiable information for an other than authorized purpose.” Any individual discovering a suspected or confirmed breach must report the incident to the NGB Privacy Office.

In addition to the Privacy Act, DoD personnel, including the National Guard, must comply with a wide range of other privacy-related laws and regulations. For example, DoDD 5200.27, which covers the “Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense,” specifically “prohibits collecting, reporting, processing, or storing information on individuals or organizations not affiliated with the Department of Defense, except in those limited circumstances where such information is essential to the accomplishment of the DoD missions [as set forth in the directive].” Commanders, and their staff, are encouraged to consult with their judge advocate anytime their proposed activities or mission may require the collection, processing, or storing of personal information.

Each Wing Knowledge Operations/Army Privacy Manager should develop and implement privacy programs for awareness for compliance with Federal Law and DoD/Services policies.

Key References:

- a) OMB Memorandum M-17-12, January 2017
- b) 5 U.S.C. § 552a, Privacy Act of 1974
- c) DoDD 5400.11, *DoD Privacy and Civil Liberties Programs*, 29 October 2014
- d) DoD 5400.11-R, *Department of Defense Privacy Program*, 14 May 2007
- e) DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 7 January 1980

## 14. FOIA

### Freedom of Information Act

Topic: What is the Freedom of Information Act (FOIA)?

#### Guidance

Per 5 U.S.C. § 552, FOIA is a disclosure statute that provides the right for any person to obtain access to federal agency records, except to the extent the records are exempt from public disclosure.

Per 5 U.S.C. § 552, common exemptions used in DoD are:

Exemption 1: Classified information classified under E.O. 13526;

Exemption 3: Records prohibited from release by statute;

Exemption 4: Trade secrets and/or commercial or financial information from a person that is privileged or confidential;

Exemption 5: Inter-agency or intra-agency memorandums or letters that are part of a decision-making process, attorney-client privilege or work products, or privileged records prepared in anticipation of litigation;

Exemption 6: Personnel and medical files that would constitute a clearly unwarranted invasion of personal privacy if disclosed. Lists of names of DoD personnel below the grade of O-7 except for those that routinely interact with the public or are Command Spokespersons (Commanders, Chief of Staff, PA, FOIA);

Exemption 7: Records compiled for law enforcement purposes (also internal investigations such as administrative investigations) that could: (A) interfere with enforcement proceedings; (B) deprive a person of a right to fair trial or impartial adjudication; (C) constitute an unwarranted invasion of privacy; (D) disclose identities of confidential sources; (E) would disclose techniques and procedures for law enforcement investigations or prosecutions; (F) endanger the life or physical safety of an individual.

Per DoDD 5400.7, it is DoD policy to promote transparency and accountability by making available DoD records requested by a member of the public who explicitly or implicitly cites the FOIA in their request to release DoD records to the public unless those records are exempt from disclosure.

FOIA requests must be written (e-mail/fax/physical mail/web-form); explicitly or implicitly invoke the federal FOIA; reasonably describe the desired record(s); give assurances to pay required fees or request fee waiver; and must not be prepared using federal resources or sent through government e-mail. The request must be made IAW the agency's published rules. The FOIA does not require agencies to respond to questions posed as FOIA requests. The FOIA also does not require agencies to provide an explanation of the records provided in response to a FOIA request.

#### FOIA Request Processing

ANG FOIA Requests are all processed by NGB; ARNG FOIA Requests are processed at JFHQ but denials (full or partial) are sent to NGB to adjudicate the final response. Per the FOIA, an agency has 20 days (excepting weekends and federal holidays) days to respond to requests.

## Discussion

The Supreme Court explained that “the basic purpose of the FOIA is to ensure an informed citizenry, vital to the functioning of a democratic society, needed to check against corruption and to hold the Governors accountable to the governed.” *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242(1978).

State employees cannot be involved in processing federal FOIAs. FOIA Requests are part of a Privacy Act System of Record, the notices are published by the respective Services.

State employees are not covered under the (b)(1) Routine Use (Disclosure within DoD) and it would be a PA violation and PII Breach for them to access Federal FOIA requests.

### Key References:

- a) 5 U.S.C. § 552, Freedom of Information Act
- b) DoDD 5400.07, *DoD Freedom of Information Act (FOIA) Program*, 5 April 2019
- c) DoDM 5400.07, *DoD Freedom of Information Act (FOIA) Program*, 5 April 2019
- d) DoDI 5015.02, *DoD Records Management Program*, 24 February 2015, Incorporating Change 1, 17 August 2017
- e) Memorandum from Vice Chief, *National Guard Bureau*, subject: *Records Management ‘Do Not Destroy’ Order*, 25 November 2015
- f) 437 U.S. 214, 242, *NLRB v. Robbins Tire & Rubber Co.*, 1978
- g) DoD FOIA Website, <https://open.defense.gov/Transparency/FOIA.aspx>

## 15. National Guard Intelligence Activities

Topic: What intelligence activities may National Guard conduct?

### Guidance

Generally, National Guard personnel are permitted to conduct Incident Awareness in a Title 32 status. Title 32 National Guard are permitted to conduct Incident Awareness and Assessment (IAA), provided that they are conducting realistic training and evaluation in support of their primary Federal military mission. IAA is defined as the processing, analysis, and dissemination of information collected or acquired through the authorized use of intelligence surveillance, and reconnaissance (ISR), and other intelligence-related and/or non-intelligence capabilities, during defense support of civil authorities and National Guard domestic operations. The eight mission areas of IAA are situational awareness, damage assessment, evacuation monitoring, SAR, CBRN assessment, hydrographic survey, dynamic ground coordination, and cyberspace incident response.

Per DoDM 5240.01, a Defense Intelligence Component unit may intentionally collect U.S. persons' information (USPI) **only if** the information sought is reasonably believed to be necessary for the performance of an authorized intelligence mission or function assigned to the unit, and if the USPI falls within the following categories: (1) Publicly available; (2) Consent; (3) Foreign Intelligence; (4) Counterintelligence; (5) Threats to safety; (6) Personnel Security; (7) Physical Security, and other limited categories enumerated in DoDM 5240.01.

Per CNGBI 2000.01D, Title 32 NG intelligence personnel operate as members of the DoD intelligence component and **must comply** with all DoD guidance and federal laws applicable to the component, to include all Intelligence Oversight (IO) rules:

(1) NG intelligence component personnel and equipment may be used for IAA to fulfill TAG requirements for situational awareness or planning purposes, or upon receipt of an NG JFHQ-S or NGB-validated primary agency/lead federal agency Request for Assistance (RFA). IAA activities will not be used to intentionally collect USPI, which includes information in all media and formats.

(2) NG intelligence personnel and equipment may not be used for non-intelligence activities unless that use is approved by the SecDef or his designee or otherwise permitted by DoD policy or regulations.

(3) NG intelligence personnel in SAD are not members of the DoD intelligence component, and are prohibited from engaging in DoD intelligence activities, and from using DoD intelligence equipment and facilities unless authorized by SecDef (or designee) or otherwise permitted by DoD policy or regulations.

(4) NG personnel in SAD are subject to the provisions of state and federal law, to include privacy laws. In most states, the collection, use, maintenance, and dissemination of USPI is strictly regulated; therefore, NG members in a SAD should seek competent legal advice on state laws before collecting USPI.

Per CNGBI 3000.07 the NG is prohibited from acquiring, reporting, processing, and storing information on individuals and organizations not affiliated with DoD, except in those limited circumstances where such information is essential to the accomplishment of authorized missions

listed in CNGBI 3000.07 and DoDD 5200.27. Information-gathering activities are subject to civilian control, high levels of general supervision, and frequent inspections.

## Discussion

Only those intelligence units and personnel with an **authorized mission and authority** may lawfully conduct intelligence activity. Do not conduct any unapproved intelligence activities without the express coordination with NGB. Maintain an active Intelligence Oversight (IO) program and utilize the full resources of the J-2, IG and JA prior to making any decisions regarding intelligence activities. If times does not permit a review of a proposed intelligence activity, then another sourcing solution outside of the state NG should be utilized until proper review and coordination is conducted.

**SAD.** NG intelligence personnel in SAD are not members of the DoD intelligence component and are prohibited from engaging in DoD intelligence and CI activities. SAD has no mission or authority to conduct DoD intelligence or intelligence-related activities. SAD are prohibited from using DoD intelligence and ISR equipment, such SIPRNET and JWICS or national or DoD CI and human intelligence (HUMINT) tools, such as the Counterintelligence/Human Intelligence Automated Tool Set (CHATS) or Counterintelligence/Human Intelligence Information Management System (CHIMS), or resources intended for CI and HUMINT activities, unless authorized by SecDef. SAD may engage in the collection of criminal intelligence if such activities are specifically authorized under state law. Criminal intelligence is **a term of art by which information is compiled, analyzed, and/or disseminated to anticipate, prevent, or monitor criminal activity. Criminal intelligence serves a law enforcement function and derives from state and federal criminal law and procedures. All restrictions on the use of DoD intelligence and ISR equipment still apply when conducting criminal intelligence in SAD in accordance with state law.**

**SAD Access to Federal Security Clearances.** Security clearances, including eligibility for, access to, and need to know determinations, are governed by E.O.s 12968 and 13549 to ensure proper safeguarding of information shared with state, local, tribal, and private sector entities. Blanket access to a DoD security clearance for State use is prohibited. State use of DoD security clearances must conform to the laws and DoD policies governing access to and protection of Federal Government classified information and systems and controlled unclassified information and systems. Access to DoD classified information can be granted by a DoD sponsor on a case-by-case, mission-specific basis if

- Requestor has an adjudicated DoD security clearance;
- Requestor is carrying out the sponsor's mission;
- Sponsor determines that the Requestor has a "need for access" and "need to know" to carry out the assigned mission; and
- Sponsor has security cognizance over the assigned mission.

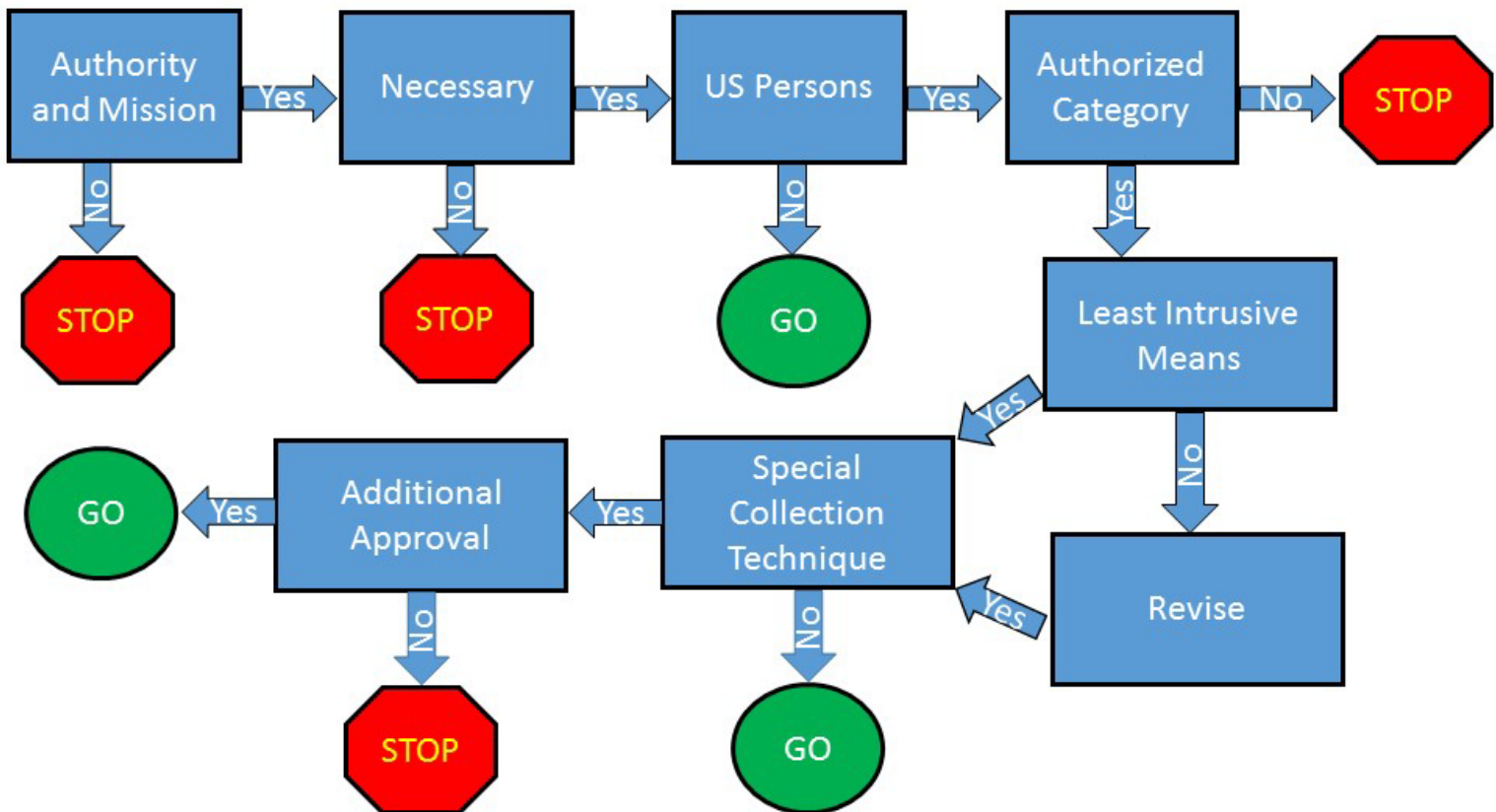
## Key References:

- a) DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 7 January 1980



- b) DoDM 5240.01, *DoD Intelligence Activities*, 27 August 2007, Incorporating Change 3, 9 November 2020
- c) CNGBI 2000.01D, *The Conduct and Oversight of National Guard Intelligence Activities*, 18 January 2022, Incorporating Change 1, 15 June 2023
- d) CNGBI 3000.07, *Acquisition and Storage of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 15 November 2023
- e) CNGBM 2000.01B, *National Guard Intelligence Activities*, 24 August 2022

# DoD IC Collecting on U.S. Persons The Process



## National Guard Intelligence Oversight

Topic: What are the National Guard obligations regarding Intelligence Oversight?

### Guidance

CNGBI 2000.01D states that NG intelligence personnel in Title 32 operate as members of the DoD intelligence component and must comply with all DoD guidance and federal laws applicable to the component, to include all Intelligence Oversight (IO) rules.

Per DoDD 5148.13, Inspectors General, as part of their inspection of DoD intelligence components, and General Counsels, as part of their oversight responsibilities shall seek to determine if ... components are involved in any questionable activities.

Per CNGBI 0700.01A, NG organizations, units, and activities that have an inherent intelligence function will have an IO Program. The NGB-IGO and State IGs ensure IO programs address and document, at minimum... intelligence units, IO monitoring, lawful collection, IO training, IO inspection, intelligence equipment, SAD activities, and other issues such as PAO, CD, CST and Info Ops.

State IGs will:

- (1) Inspect all intelligence and non-intelligence units conducting any intelligence function and/or related activities within their States as directed by their TAG;
- (2) Identify intelligence components and personnel performing intelligence functions;
- (3) Ascertain whether any non-intelligence unit, not specifically identified as an intelligence element, is being used for a DoD intelligence or related purpose;
- (4) Review any planned and on-going NG information collection activities with the SJA;
- (5) Determine if intelligence components... are involved in questionable activities;
- (6) Ensure procedures exist... for the reporting of Questionable Intelligence Activities (QIA) or Significant or Highly Sensitive Matters (S/HSM) that relate to intelligence personnel or intelligence activities;
- (7) Report all QIA and S/HSM through Intel and IG channels to NGB-IGO;
- (8) Forward copies of IO related findings/inspection reports to the NGB-IGO office;
- (9) Coordinate with the SJA for interpretation of federal and state law, and applicable directives as they relate to intelligence activities. Unresolved questions should be forwarded to NGB-IGO for coordination, resolution, or additional legal review.

### Discussion

By DoD and NGB policy, TAGs, through their Inspectors General, are responsible to ensure all states have an IO program, conduct routine IO inspections and IO training. Any QIA or S/HSM should be reported immediately IAW with CNGBI 0700.01A. Only intelligence units and personnel with mission and authority may conduct intelligence activities.

USD(I) and OSD GC define information regarding foreign actors that drives operations, whether offensive or defensive in nature, as intelligence. Coordinate all requests for support with intelligence regulated staff sections, IG, SJA, and NGB.

Key References:

- a) DoDD 5148.13, *Intelligence Oversight*, 26 April 2017
- b) DoDM 5240.01, *Procedures Governing the Conduct of DoD Intelligence Activities*, 8 August 2016
- c) CNGBI 0700.01A, *Inspector General Intelligence Oversight*, 21 December 2018
- d) CNGBI 2000.01D, *The Conduct and Oversight of National Guard Intelligence Activities*, 18 January 2022, Incorporating Change 1, 15 June 2023

## State National Guard Domestic Imagery

Topic: What are the requirements to use NG assets for domestic imagery?

### Guidance

As a general rule, the NG can use domestic imagery for providing situational awareness, assessing the existence and extent of damage, and evaluating the effectiveness of damage mitigation efforts, provided that collection complies with Intelligence Oversight, including filing a Proper Use Memorandum (PUM).

Per CNGBM 2000.01B, domestic imagery is defined as any imagery collected by satellite (national, tactical, or commercial) or airborne platforms for intelligence or intelligence-related purposes that cover the land areas of the 50 states, the District of Columbia, and the U.S. Territories and possessions, to a 12 nautical mile (NM) seaward limit of these land areas.

Generally valid missions for domestic imagery include responses to natural disasters and civilian emergencies; security-related vulnerability assessments; requirements in support of government environmental/scientific studies, training or navigational purposes, and requirements for imagery in support of law enforcement agencies when authorized. Imagery may not be collected for the purpose of gathering any specific information about a U.S. person or private entity, without consent, nor may stored imagery be retrievable by reference to a U.S. person's information (USPI).

Per DoDM 5240.01, USPI is information reasonably likely to identify one or more specific U.S. persons. USPI may be either a single item of information or information that, when combined with other information, is reasonably likely to identify one or more specific U.S. person. Depending on the context, examples of USPI may include: names or unique titles; government-associated personal or corporate identification numbers; unique biometric records; financial information; and street address, telephone number, and Internet Protocol address information. A U.S. person is further defined in DoDM 5240.01 as a U.S. citizen, an alien known by the Defense Intelligence Component concerned to be a permanent resident alien, an unincorporated association substantially composed of U.S. citizens or permanent resident aliens, a corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments. A person or organization in the United States is presumed to be a U.S. person, unless specific information to the contrary is obtained. Conversely, a person or organization outside the United States, or whose location is not known to be in the United States, is presumed to be a non-U.S. person, unless specific information to the contrary is obtained.

An approved PUM must be on file with NGB-J2 before airborne platforms (ISR/IAA) can be tasked to collect domestic imagery, the use of intelligence analysts/systems to analyze sensor data, or the use of sensor data for intelligence/IAA purposes. PUMs must be IAW CNGBM 2000.01B, DIA policy and guidance, applicable E.O.s, and DoD regulations. A PUM is a memorandum that requests use of platforms for a domestic imagery requirement and its intended use. A PUM acknowledges awareness of the legal and policy restrictions regarding domestic imagery collection, retention, dissemination, and use.

Any NG JFHQ-S that owns or has operational control over NG assets that conduct domestic imagery activities within the U.S., Territories, and DC is responsible for creating and seeking approval for a PUM before the execution of a domestic imagery collection mission. The JFHQ-S J2 will route PUMs to NGB-J2 who then forwards the PUM to NGB-GC and NGB-IG for review. If the PUM is sufficient, NGB-J2 will approve the PUM and notify the requesting State.

In a direct and immediate emergency in which time precludes obtaining an approved PUM before collection, TAG may authorize airborne domestic imagery collection when that support is consistent with the Constitution and other laws, regulations, and instructions. The NG JFHQ must implement the proper safeguards to ensure all applicable security regulations, guidelines, and other restrictions are followed. A report will be made immediately to the CNGB through the NGCC. A PUM will be filed with NGB-J2 as soon as possible thereafter. Governors and TAGs are authorized to approve the use of DoD UAS in certain circumstances as discussed below.

Domestic airborne imagery cannot be analyzed or used beyond the purpose identified in the original PUM without obtaining appropriate authorization through an amended PUM. Distribution of domestic imagery to parties other than those identified in the approved PUM is prohibited unless the recipient is reasonably perceived to have a specific, lawful governmental function requiring it. Adding users to the original PUM is accomplished by submitting an amendment to the PUM.

Unless otherwise approved, domestic imagery must be withheld from all general access database systems and securely held. Applicable security and classification requirements must be met. NG intelligence components may obtain NGA domestic commercial satellite imagery without higher-level approval when supporting a valid federal government mission requirement. NG intelligence components may also use domestic open-source or publicly available imagery. An MFR describing the purpose of the domestic imagery and naming the component official approving the use will be retained on file in all cases.

## Discussion

Domestic imagery supports the commander's needs for Incident Awareness and Assessment (IAA). For operational and training requirements NG units may, at times, require newly collected or archived domestic imagery. Domestic imagery is validated through the use of a properly authorized PUM reviewed and approved by NGB. Failure to file a proper PUM may constitute Questionable Intelligence Activity. The proper format for PUMs is found in CNGBM 2000.01B. The PUM approval process has become a standard practice for authorizing the use of domestic imagery and addressing the multitude of related issues. Commanders should ensure the use of approved PUMs as early as possible for training and planned events and as soon as possible for emergency requirements. Commanders should become familiar with CNGBM 2000.01B during steady state and through exercises/training events. Limited authority for TAGs to authorize emergency domestic imagery collection has been provided per CNGBM 2000.01B.

In October 2023, SecDef lowered approval authority for domestic use of DoD UASs based on purpose and size of the UAS. The GCC is the approval authority for UAS used in T10 for DSCA-SAR and DSCA-IAA. The Governor or TAG may approve use of DoD UAS Groups 1-5

for State-SAR and State-IAA when requested by the State Governor provided that the UAS is not allocated for DoD purposes, USPI will not be targeted, use is conducted IAW FAA policies and DoD FAA MOA, and NG personnel using or supporting the UAS operations are in SAD. Such use is reportable to NGB.

For all other use of DoD UAS SecDef approval is the default requirement unless approval authority has been specifically delegated. SecDef approval requests require the Governor's official request in writing with analysis and justification for use that sustained endurance efforts are required, unmanned aircraft provide superior capabilities, physical infrastructure or environmental limitations prohibit the use of manned rotary- or fixed-wing aircraft, and manned aircraft are tasked with other missions (e.g., MedEvac, transport, firefighting, etc.). Also required for staffing is the FAA COA, approved PUM and NGB J2 PUM Approval Memo, 5 x 8 with arming status and background, and map of operating area. The NGB J35 is the POC for all SecDef UAS approval requests.

**Spying on protestors during Civil Disturbance Operations.** NG intelligence personnel are NOT law enforcement nor may they collect criminal intelligence. Accordingly, they are expressly prohibited from collecting, reporting, disseminating and retaining USPI unless reasonably believe necessary for authorized defense-related FI mission and it falls within one or more authorized categories of information outlined in DODM 5240.01 and CNGBM 2000.01B. Furthermore, DODM 5240.01 expressly prohibits intelligence personnel from monitoring the activities of U.S. persons. Therefore, since civil disturbance involves U.S. persons, the NG is very limited on the support that can be provided during civil disturbance response. Support must be constrained to analysis and reporting on lines of communication, key and critical infrastructure, location of NG and first responders and ingress and egress routes, and the geographical location of the large-scale destruction of property (e.g., arson and looting) -- general geographic info, and contain no specific USPI. J2 has no mission or authority to provide information regarding protests, protest groups, protestors, and/or civil disturbance; this includes creating products/reports for other entities to disseminate.

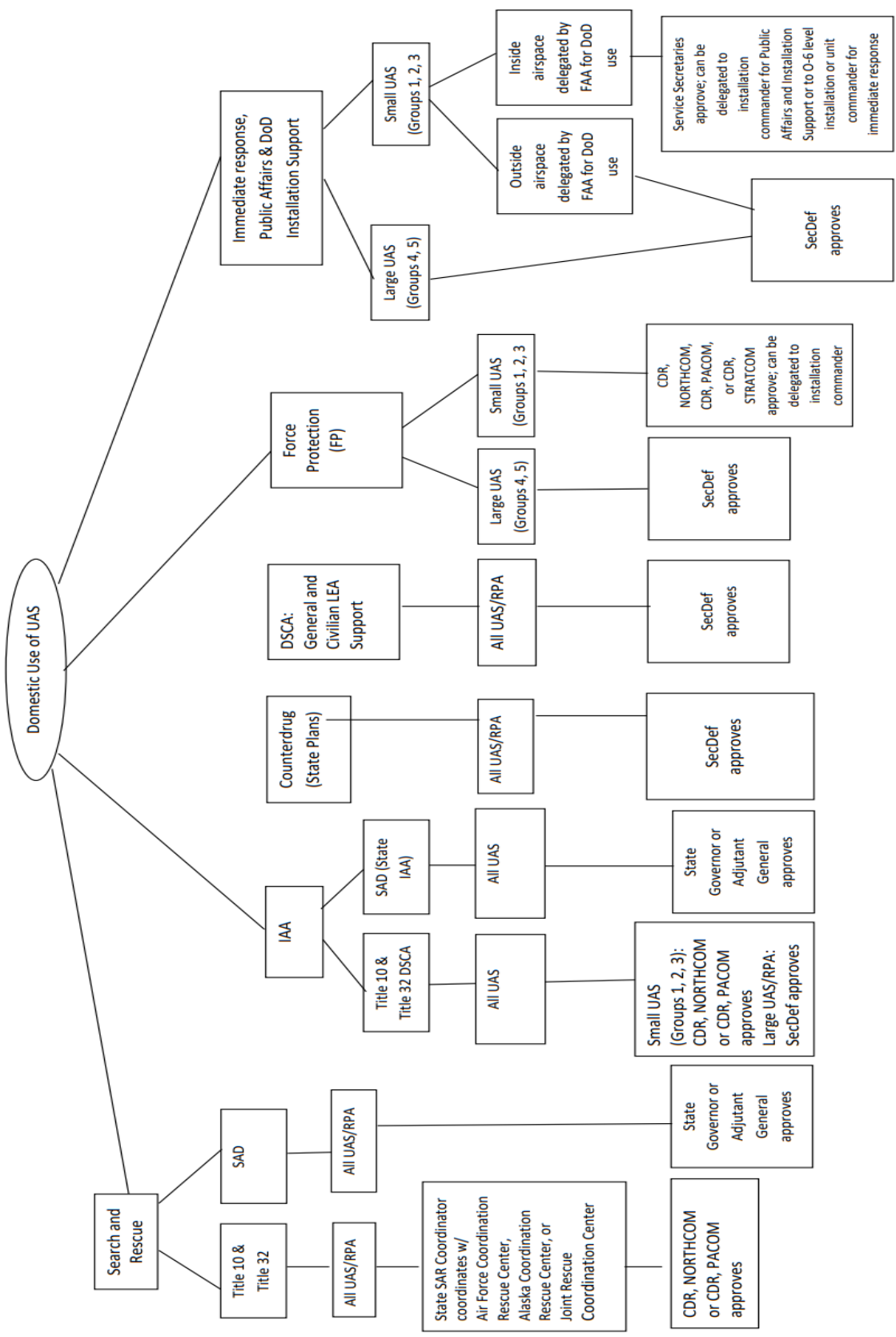
The First Amendment protects the right of the people to peaceably assemble. The NG may not investigate U.S. persons or collect or maintain information about them solely for the purpose of monitoring activities protected by the First Amendment or the lawful exercise of other rights secured by the Constitution or laws of the United States. Therefore, the perception that NG is monitoring protests or protestors/protest groups is prohibited.

The NG non-intelligence component is subject to the provisions of DoDD 5200.27 and CNGBI 2400.01, and, thus, it is very limited as to what non-DoD affiliated person information may be acquired and used. (Non-DoD affiliated persons are anyone (U.S. Person or foreign national) in the U.S. or U.S. persons outside the U.S. who do not have a relationship, professional, official or otherwise, with the DoD or the Armed Services). DoD prohibits the NG non-intelligence component from 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 one of three authorized DoD missions: (1) Protection of DoD Functions and Property (i.e., must be a direct threat to DoD or NG), (2) Personnel Security, (3) and Operations Related to Federal-level Civil Disturbance (this is the Federal threshold of civil disturbance when the U.S. Attorney General is the chief civilian officer

in charge of coordinating all Federal Government activities relating to civil disturbances. Then, **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.

Key References:

- a) SecDef Policy Memorandum, *Guidance for the Use of Unmanned Aircraft Systems in the U.S. National Airspace*, 31 August 2023
- b) DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 29 December 2010, Incorporating Change 2 19 March 2018
- c) DoDM 5240.01, *Procedures Governing the Conduct of DoD Intelligence Activities*, August 8, 2016
- d) DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 7 January 1980
- e) CNGBI 3000.07, *Acquisition and Storage of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*, 15 November 2023
- f) CNGBM 2000.01B, *National Guard Intelligence Activities*, 24 August 2022





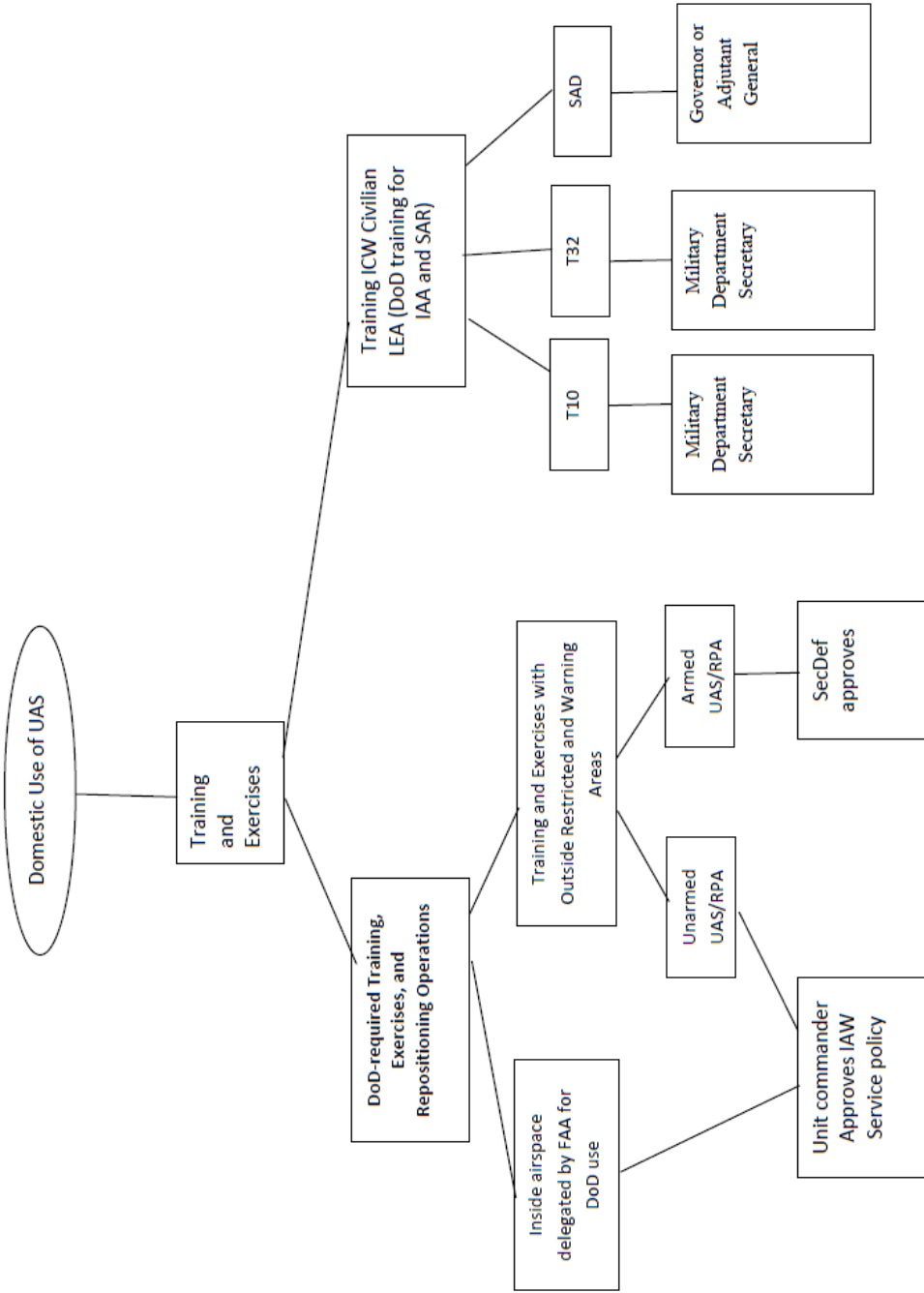


Chart addresses authorized purposes for domestic UAS use IAW SecDef policy memorandum, Guidance for the Use of Unmanned Aircraft Systems in the U.S. National Airspace”, dated 31 October 2023. All legal, intelligence oversight (including the requirement to obtain a PUM), Privacy Act, and airspace issues remain and must be properly addressed in every mission.

	UAS/RPA Size	Title 10	Title 32	State Active Duty
<b>Counterdrug (if delegated for CD operational support in DoDI 3000.14)</b>	All	Geographic Combatant Commander	Geographic Combatant Commander	(Secretary of Defense)
<b>Counterdrug (State Plans Support)</b>	All	N/A	Secretary of Defense	N/A
<b>DSCA: General and Civilian LEA Support</b>	All	Secretary of Defense	Secretary of Defense	(Secretary of Defense)
<b>Force Protection</b>	Small (Groups 1, 2, and 3)	NORTHCOM, PACOM or STRATCOM Commander or Service Secretary; can be delegated to unit or installation commander.	NORTHCOM, PACOM or STRATCOM Commander or Service Secretary; can be delegated to unit or installation commander	(Secretary of Defense)
	Large (Groups 4 and 5)	Secretary of Defense	Secretary of Defense	(Secretary of Defense)
<b>Immediate Response</b>	Small (Groups 1, 2, and 3)	Outside DoD airspace: Secretary of Defense Inside DoD airspace: Service Secretary; can be delegated to O-6 level installation or unit commander	Secretary of Defense	(Secretary of Defense)
	Large (Groups 4 and 5)	Secretary of Defense	Secretary of Defense	(Secretary of Defense)
<b>Incident Awareness and Assessment</b>	All	Geographic Combatant Commander; may be delegated to Service Component Commander	Geographic Combatant Commander; may be delegated to Service Component Commander	State Governor or Adjutant General
<b>Installation Support (Includes surveys, inspections, repositioning operations, DCIO crime scene surveillance (consistent with DoD IG guidance), and capability demonstrations in restricted airspace; and other installation support as specified by Service implementing guidance)</b>	Small (Groups 1, 2, and 3)	Outside DoD airspace: Secretary of Defense Inside DoD airspace: Service Secretary; can be delegated to installation commander	Outside DoD airspace: Secretary of Defense Inside DoD airspace: Service Secretary; can be delegated to installation commander	(Secretary of Defense)
	Large (Groups 4 and 5)	Secretary of Defense	Secretary of Defense	(Secretary of Defense)

	<b>UAS/RPA Size</b>	<b>Title 10</b>	<b>Title 32</b>	<b>State Active Duty</b>
<b>Other Authorized Missions Within Airspace Delegated by the FAA for DoD Use (Includes surveys, inspections, map generation, construction, and environmental site monitoring; and research and other mission support as specified in Service implementing guidance)</b>	Small (Groups 1, 2, and 3)	Service Secretary; may be delegated to O-6-level unit or installation commander	Service Secretary; may be delegated to O-6-level unit or installation commander	(Secretary of Defense)
	Large (Groups 4 and 5)	Secretary of Defense	Secretary of Defense	(Secretary of Defense)
<b>Public Affairs</b>	Small (Groups 1, 2, and 3)	Outside DoD airspace: Secretary of Defense Inside DoD airspace: Service Secretary; can be delegated to installation commander	Outside DoD airspace: Secretary of Defense Inside DoD airspace: Service Secretary; can be delegated to installation commander	(Secretary of Defense)
	Large (Groups 4 and 5)	Secretary of Defense	Secretary of Defense	(Secretary of Defense)
<b>Research, Development, Test, and Evaluation (RDT&amp;E) Within Airspace Delegated by the FAA for DoD USE</b>	All	Unit commander IAW Service-specific directives	Unit commander IAW Service-specific directives	N/A
<b>Search and Rescue</b>	All	Geographic Combatant Commander through Rescue Coordination Center; may be delegated to PACAF. 1 <sup>st</sup> Air Force or 11 <sup>th</sup> Air Force Commanders within their respective AORs	Geographic Combatant Commander through Rescue Coordination Center; may be delegated to PACFA. 1 <sup>st</sup> Air Force or 11 <sup>th</sup> Air Force Commanders within their respective AORs	State Governor or Adjutant General
<b>Training, Exercises, and Repositioning Operations Within Airspace Delegated by the FAA for</b>	All	Unit Commander	Unit Commander	N/A

<b>DoD Use: DoD Required</b>				
<b>Training and Exercises Exception: Training and Exercises with Armed UAS</b>	All	Secretary of Defense	Secretary of Defense	N/A

	UAS/RPA Size	Title 10	Title 32	State Active Duty
<b>Outside Restricted and Warning Areas</b>				
<b>Training and Exercises: ICW Civilian LEA (DoD training for IAA and SAR only)</b>	All	Military Department Secretary	Military Department Secretary	Governor or Adjutant General

Notes:

Any proposed use of UAS not specifically delineated in the policy requires Secretary of Defense approval and is noted in parentheses.

UAS Category	Maximum Gross Takeoff Weight (pounds)	Normal Operating Altitude (feet)	Speed (Knots Indicated Airspeed)
<b>Group 1</b>	0-20	<1,200 above ground level (AGL)	100 knots
<b>Group 2</b>	21-55	<3,500 AGL	<250 knots
<b>Group 3</b>	<1,320	<18,000 mean sea level (MSL)	<250 knots
<b>Group 4</b>	>1,320	<18,000 mean sea level (MSL)	Any airspeed
<b>Group 5</b>	>1,320	<18,000 mean sea level (MSL)	Any airspeed

## 16. Medical Licensing

Topic: What are the requirements and authorities for licensing NG Health Care Professional (HCP) during a domestic operation?

### Guidance

HCP privileging for a NG activated to Title 10 is done by a Military Treatment Facility IAW Defense Health Agency Procedures Manual (DHA-PM) 6025.13 and AR 40-68 or AFI 44-119. The privileges granted while on Title 10 typically include the provider's full range of skills and are commensurate with the MOS/ AFSC.

NG HCP privileging for Title 32 IDT does not include routine medical care. It is limited to duties ISO Individual Medical Readiness (IMR) tasks (e.g., Periodic Health Assessments (PHAs), Immunizations, etc.). NG HCP privileging for Title 32 IDT can include routine medical care, but authorization to do so requires advanced coordination with a privileging authority. The authorities for credentialing and privileging SAD are determined by State law and Governor's orders.

FTCA for liability coverage is status-dependent. Title 10 and Title 32 are covered duty statuses and professional liability coverage for HCPs in these statuses is provided under the FTCA if the health care practice is within the scope of employment IAW State law. FTCA does not cover NG HCPs in SAD. Liability coverage is provided by State law and/or an EMAC. HCPs in a Title 32 and Title 10 duty status can also take advantage of liability coverage available under State Law and/or an EMAC in addition to FTCA liability coverage.

### Discussion

The primary Federal statute regarding credentialing of military personnel is 10 U.S.C. § 1094, licensure requirement for health care professionals. This law states that an armed forces health care professional who has a current unrestricted license from any State and is performing authorized duties for DoD may practice his or her health care profession in any State, notwithstanding any other health care licensure laws and regardless of whether the practice occurs in a DoD facility, a civilian facility affiliated with DoD, or any other location authorized by SecDef. HCP includes physicians, dentist, psychologists, family therapists, nurses and any other person providing direct patient care as may be designated by SecDef in regulations.

NG HCPs must have current credentials and be properly privileged before providing health care. Credentialing of HCPs in Title 10 or Title 32 is done centrally with final privileging done locally from an appropriate privileging authority. The authority for NG HCP privileging is dependent upon duty status.

Credentialing and privileging of NG HCPs in SAD is entirely a State matter. Employing NG HCPs in SAD to provide medical care to civilians is possible, but must be done with careful

advanced planning and done under proper State authorities. NG medical force structure is not designed to support large populations. The NG medical focus is to support line elements. Most NG HCPs provide medical services in the civilian sector in their civilian capacity. In the event of a large incident, these HCPs would be called upon to assist in their civilian jobs and would not be available for NG duty without negatively impacting local medical services.

Non-DOD facilities. Privileging and credentialing are handled IAW DoD regulations on emergency rules for HCPs working in civilian facilities or in MTFs through ASPR and through DODIs handling emergency declarations of the states. Such guidance will cover privileging as long as properly licensed and credentialed under DoD regulations based on the present emergency. When NG HCP are treating non-military personnel, liability protection issues becomes one of state law regarding coverage of Good Samaritan Laws, EMACS, Governor or legislature waiver or modifications of laws or regulations, and requirements in DoDM 3025.01 and DODI 3025.24 for civil institutions to request support from military institutions dependent on the circumstances of the request for support.

#### Key References:

- a) DoDI 3025.24, *DoD Public Health and Medical Services in Support of Civil Authorities*, 30 January 2017
- b) DoDM 3025.01, *Volume 2, Defense Support of Civil Authorities: DoD Incident Response*, 11 August 2016, Incorporating Change 1, 12 April 2017
- c) AR 40-68, *Clinical Quality Management*, 26 February 2004, Revision Issue Date 22 May 2009
- d) AFI 44-119, *Medical Quality Operations*, 14 August 2011
- e) Defense Health Agency Procedures Manual (DHA-PM) 6025.13, Volume 4, 29 August 2019
- f) 10 U.S.C. 1094, *Licensure requirements for health-care professionals*

## Quarantine

Topic: What is the ability of States to quarantine? Does the federal government affect the states quarantine powers?

### Guidance

State authorities have the primary role in managing Public Health Emergencies (PHE). Pursuant to their police powers, all State governments may legislate and regulate in the interest of their citizens' health, safety, and welfare. Intra-State Quarantine is a public health measure reserved to the States under the 10th Amendment of the Constitution. Where the communicable disease remains or is likely to remain intra-State, quarantine authority rests with State officials and each State has its own quarantine statute.

The Public Health Service Act (PHSA) authorizes the President to utilize the Public Health Service to promote the public interest, in the event he declares war or a national emergency. Pursuant to 42 U.S.C. § 264, the Surgeon General, upon approval of the Secretary of HHS, may make and enforce the regulations he determines are necessary to prevent the introduction, transmission, or dissemination of communicable diseases from foreign countries into the States or possessions, or from one State or possession into any other State or possession. Title 42 U.S.C. § 243 provides for State and local assistance from the National Guard.

In 42 CFR Part 70, the government is able to restrict interstate travel of persons suspected of carrying a communicable disease. For individuals to by-pass this restriction, they must receive a permit from the health officer of their state authorizing the travel, if the destination state requires such a permit. If the Director of the CDC believes that the state or local government is not taking adequate measures to contain a communicable disease, the Director may "take such measures to prevent such spread of the diseases as he/she deems reasonably necessary." The CDC has broad authority to take any actions deemed "reasonably necessary," in the event the Director determines that local authorities and controls cannot halt the spread of a communicable disease.

Under the CFR Control of Communicable Diseases Title 21, Parts 1240 and 1250 gives the FDA broad authority to prevent the spread of communicable diseases by way of certain types of interstate traffic. If the Commissioner of Food and Drugs "determines that the measures taken by health authorities" at the State and local levels are "insufficient" to stop the spread of communicable diseases across State lines, the Commissioner is authorized to conduct a range of actions to halt the proliferation of the disease.

### Discussion

Quarantine is largely a State responsibility. SAD should be used when making decisions for sourcing such activities.

However, the Services could order a member to duty (with member and TAG consent) under 10 U.S.C. § 12301(h) to be "medically evaluated for disability or other purposes." Quarantine, and



self-isolation directed by military authorities for medical purposes, could reasonably be considered a part of a medical evaluation for other purposes (to see if become symptomatic and for follow up testing). An LOD requires a condition to be traceable to a period of duty and incurred through that duty by a preponderance of evidence.

Key References:

- a) 42 U.S.C. § 264, the Surgeon General
- b) 42 U.S.C. § 243, General grant of authority for cooperation
- c) 42 CFR Part 70, Interstate Quarantine
- d) 21 CFR Part 1240, Control of Communicable Diseases

## Immunizations

Topic: What is the authority of NG healthcare providers to immunize members of the public?

### Guidance

NG HCPs can provide immunizations to the Public pursuant to IRA, provided that it is for the purpose of saving lives, preventing human suffering, and/or mitigating great property damage or pursuant to the Stafford Act, provided that there is a validated mission assignment from a lead federal agency.

HCP privileging for a NG activated to Title 10 is done by a Military Treatment Facility IAW AR 40-68 or AFI 44-119. The privileges granted while on Title 10 typically include the provider's full range of skills and are commensurate with the MOS/ AFSC. However those privileges are generally limited to the DoD population and not authorized for the Public.

HCP privileging for a NG HCP in Title 32 IDT status does not include routine medical care and is usually limited to duties ISO Individual Medical Readiness tasks (e.g., Periodic Health Assessments, immunizations, etc.) HCP privileging for a NG HCP in Title 32 ADT status can include routine medical care, but authorization to do so requires advanced coordination with a privileging authority. Title 32 also would be limited to the DoD Population and does not foresee healthcare to the public.

Both Title 10 and Title 32 are covered duty statuses and professional liability coverage for HCPs in these statuses is provided under the Federal Tort Claims Act if the health care practice is within the scope of employment IAW State law.

The authorities for credentialing and privileging NG HCPs in SAD are determined by State law and Governor's orders. FTCA does not cover NG HCPs in SAD. Any use of NG medical capabilities in SAD is solely and entirely a State issue. Liability coverage is solely a State responsibility and must be addressed prior to the performance of any SAD medical activities.

### Discussion

There is no authority for Title 10 and Title 32 NG to vaccinate the general public. Immunizations fall within medical care regulations and Title 10 does not have authority nor is fiscally appropriated to immunize the general public. While MTFs can immunize civilian employees and their dependents, they do not immunize contractors or the general public. Title 32 NG HCP have limited authority to provide routine health care services to fellow service members when in ADT status (e.g., sick call at AT) and readiness related services during IDT (e.g., PHAs, immunizations). Special categories of Title 32 (§ 502 (f)(2)) would operate within the same limits as Title 10 subject to their funding and authorization for duty. NG HCP in SAD could provide services to the general public IAW State laws, including authority, liability and cost.

Key References:

- a) AR 40-68, Clinical Quality Management, 26 February 2004, Revision Issue Date 22 May 2009
- b) AFI 44-119, Medical Quality Operations, 14 August 2011

## Public Health Emergency (PHE)

Topic: Can a Commander declare a PHE?

### Guidance

DODI 6200.03 outlines the PHE health powers, roles, and responsibilities of the military installation commander, including the authority for restriction of movement and increase forced protection.

Military installation commanders have inherent authority to declare a DoD PHE for that installation, in order to enact their emergency health powers to restrict movement, including increasing gate security for FP. HHS declaration of PHE triggers the commanders' authority to make the installation declaration. This would allow them to increase security for FP.

An installation that is federal property and licensed to a state is subject to the federal regulation.

### Discussion

A military installation commander is required to declare a DoD PHE for that installation in order to enact the commander's emergency health powers and restriction on movement. Such declaration can be made based on HHS's Public Emergency Declaration. Restriction on movement allows for appropriate security and enforcement measures. Security and enforcement measures likely include increased force protection.

PHEs may be declared in the United States by the Secretary of HHS at a national level (pursuant to [Sec 319] of Title 42, U.S.C.) and by SLTT government authorities in their respective jurisdictions according to applicable SLTT law.

(1) In these circumstances, the PHEO will assist the military commander in determining the impact of the emergency on the installation and what actions are necessary and practicable for the installation to act with the relevant declaration(s).

(2) Military commanders whose installations fall in the jurisdiction of an SLTT public health emergency declaration may declare a PHE on the installation to facilitate coordination with civilian authorities.

When the military commander and PHEO determine that a PHE declaration is necessary to respond to a suspected or confirmed incident, the military commander will complete a written declaration within the scope of their authority with the support and guidance of the SJA and in consultation with the public affairs office. The declaration must outline the situation and relevant actions that will be taken (see DODI 6200.03, Figure 2 for template). A declaration of a PHE within the DoD will be immediately reported through the chain of command to the Secretary of Defense.

When a military commander declares a DoD PHE within the scope of their authority due to a suspected or confirmed incident, the military commander is authorized to take relevant emergency actions to respond to the situation to achieve the greatest public health benefit while maintaining operational effectiveness. Military commander emergency health powers include, among other things:

\*Using facilities, materials, and services for purposes of communications, transportation, occupancy (e.g., emergency shelters or quarantine/isolation), fuel, food, clothing, health care, and other purposes, and controlling or restricting the distribution of commodities as reasonable and necessary for emergency response.

\*Controlling evacuation routes on, and ingress and egress to and from, the affected DoD installation or military command.

\*Restricting movement to prevent the introduction, transmission, and spread of communicable diseases or any other hazardous substances that pose a threat to public health and safety.

In the United States, restriction of movement should be considered in coordination with the local CDC quarantine officer and SLTT public health. These agencies have public health authorities that may be applicable when the military commander's authority is limited.

The DODI contains several parameters for the restriction of movement recognizing that security and enforcement measures should be appropriate to the circumstances (see DODI 6200.03, para 3.2(c)(13)).

**Contact Tracing.** NG in Title 32 may be requested to support an RFA for the voluntary collection of information from civilians that have potentially come into contact with infected individuals. DoDD 5200.27 establishes policies prohibiting the collection, reporting, processing, or storing of information on individuals or organizations not affiliated with the DoD, with limited exceptions. National Guard personnel may support the voluntary collection of information from civilians provided that:

- a. The term “contact tracing” will not be used.
- b. NG personnel will read from a script provided by the state.
- c. NG personnel will only collect information that has been voluntarily provided to them.
- d. The collected information will be for the sole use of the state.
- e. No personally identifying information will be placed or maintained on a U.S. government computer, U.S. government cell phone, or maintained in any physical files.
- f. The data provided will not be copied, saved, supplemented, or used in any manner by NG personnel.
- g. NG intelligence personnel and equipment will not be used.
- h. The use of personally owned devices is prohibited.
- i. The support requested must be coordinated with the State Attorney General to ensure compliance with state law.

j. NG personnel will receive training on state law requirements for handling of personally identifying information.

Request for support outside these parameters are subject to additional review and approval by DoD.

Key References:

- a) DODI 6200.03, Public Health Emergency Management Within the Department of Defense, 28 March 2019
- b) DoDD 5200.27, Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense, 7 January 1980

## 17. Cyberspace Activities in the National Guard cyberspace Activities in the National Guard

Topic: Cyberspace, while part of the information environment, is dependent on the air, land, maritime, and space physical domains. Much as operations in the physical domains rely on physical infrastructure created to take advantage of naturally occurring features, operations in cyberspace rely on networked, stand-alone, and platform-embedded IT infrastructure, in addition to the data that resides on and is transmitted through these components to enable military operations in a man-made domain.

Cyberspace presents unique challenges by threats from nation-states to individual actors to accidents and natural hazards; anonymity and difficulties with attribution; geography challenges; technology challenges; and private industry and public infrastructure ownership.<sup>1</sup> Cyberspace reaches across geographic and geopolitical boundaries and is integrated with the operation of critical infrastructures, as well as the conduct of commerce, governance, and national defense activities.<sup>2</sup> While many elements of cyberspace can be mapped geographically, a full understanding of an adversary's disposition and capabilities in cyberspace involves understanding the target, not only at the underlying physical network layer but also at the logical network layer and cyber-persona layer, including profiles of system users and administrators and their relationship to adversary critical factors.<sup>3</sup>

For example, cyberspace activities are generally not linear in nature. One computer does not normally interact directly with another computer. Rather, the data is transferred through multiple routers and servers, all of which may not be in the same town, state or even country. As a result, actions intended to have a domestic effect in cyberspace could have international consequences. Another consideration is that most military equipment is not governed by restrictive licensing agreements, whereas software licensing agreements may restrict who may use a cyber-tool kit and how it can be used. Finally, attribution is not as clear as in the kinetic realm. What may appear to be an action taken by a local resident could be an action orchestrated by a foreign actor.

This complex and evolving battle space requires legal practitioners to have both a basic understanding of how the cyberspace works as well as the laws and policies governing those actions.

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<sup>1</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>2</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>3</sup> Ibid.

## Discussion

The 2018 DoD Cyber Strategy directs the Department to defend forward, shape the day-to-day competition, and prepare for war by building a more lethal force, expanding alliances and partnerships, reforming the Department, and cultivating talent, while actively competing against and deterring our competitors in cyberspace.<sup>4</sup>

Cyberspace operations (CO) is the employment of cyberspace capabilities where the primary purpose is to achieve objectives in or through cyberspace. The DoD has three cyberspace missions: offensive cyberspace operations (OCO), defensive cyberspace operations (DCO), or DoD Information Network (DODIN) operations. These three mission types comprehensively cover the activities of the cyberspace forces.<sup>5</sup>

DODIN Operations. The DODIN operations mission includes operational actions taken to secure, configure, operate, extend, maintain, and sustain DOD cyberspace and to create and preserve the confidentiality, availability, and integrity of the DODIN.

DCO. DCO missions are executed to defend the DODIN, or other cyberspace DOD cyberspace forces have been ordered to defend, from active threats in cyberspace.

OCO. OCO are CO missions intended to project power in and through foreign cyberspace through actions taken in support of CCDR or national objectives.<sup>6</sup>

Authority for CO actions undertaken by the US Armed Forces is derived from the US Constitution and federal law. Authorities for specific types of military CO are established within SecDef policies, including DOD instructions, directives, and memoranda, as well as in execute orders and operation orders authorized by the President or SecDef and subordinate orders issued by commanders approved to execute the subject missions.<sup>7</sup>

NSPM-13 is the overall guidance for cyber activities conducted by the United States. It is classified and must be reviewed in its entirety. It is important to note that capability does not mean authority. **Understanding the effects of cyber capabilities is key to determining the necessary authority to perform a DoD cyber mission.** DOD conducts CO consistent with U.S. domestic law, applicable international law, and relevant USG and DOD policies. The laws that regulate military actions in U.S. territory also apply to cyberspace. Therefore, DOD cyberspace forces that operate outside the DODIN, when properly authorized, are generally limited to

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<sup>4</sup> Department of Defense, *Cyber Strategy*, (Washington D.C. 2018)

<sup>5</sup> Joint Publication 3-12, *Cyberspace Operations*, 8 June 2018

<sup>6</sup> Joint Publication 3-12, *Cyberspace Operations*, 8 June 2018

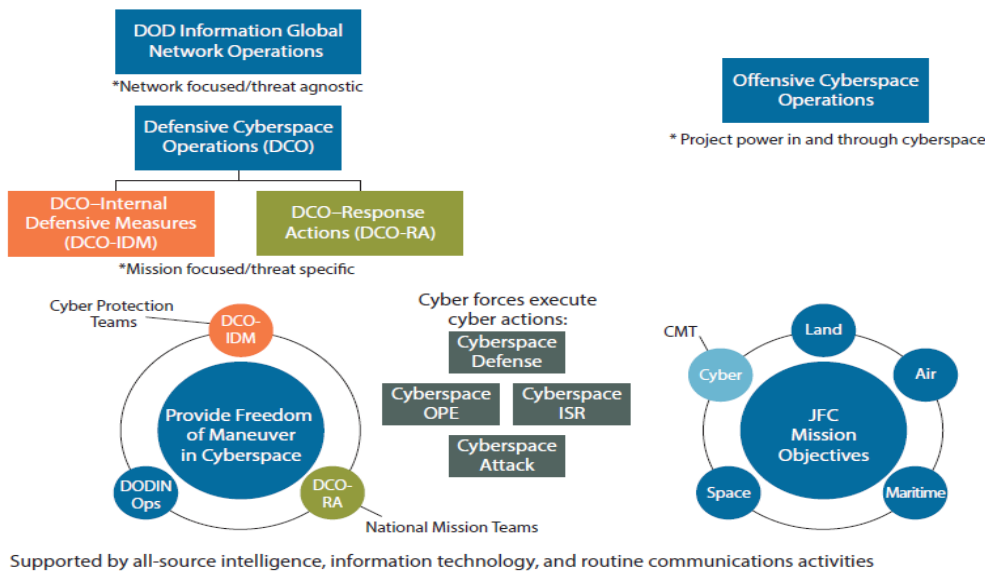
<sup>7</sup> *Ibid.*



operating in gray and red<sup>8</sup> cyberspace only, unless they are issued different rules of engagement or conducting defense support of civil authorities (DSCA) under appropriate authority. Since each CO mission has unique legal considerations, the applicable legal framework depends on the nature of the activities to be conducted, such as OCO or DCO, DSCA, Internet service provider (ISP) actions, law enforcement and counterintelligence activities, intelligence activities, and defense of the homeland.<sup>9</sup>

These DoD cyber missions can be categorized as defensive or offensive operations (as depicted in Figure 1. Cyberspace Operations) depending on the capability and the effects of that capability.<sup>10</sup>

Figure 1. Cyberspace Operations



Cyberspace missions are categorized as OCO, DCO, or DODIN operations based only on the intent or objective of the issuing authority, not based on the cyberspace actions executed, the

<sup>8</sup> The term “blue cyberspace” denotes areas in cyberspace protected by the United States, its mission partners, and other areas DOD may be ordered to protect. Although DOD has standing orders to protect only the Department of Defense information network (DODIN), cyberspace forces prepare on order, and when requested by other authorities, to defend or secure other United States Government (USG) or other cyberspace, as well as cyberspace related to critical infrastructure and key resources (CI/KR) of the United States and partner nations. The term “red cyberspace” refers to those portions of cyberspace owned or controlled by an adversary or enemy. All cyberspace that does not meet the description of either “blue” or “red” is referred to as “gray” cyberspace. Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>9</sup> Ibid.

<sup>10</sup> Brett T. Williams, “The Joint Force Commander’s Guide to Cyberspace Operations,” *Joint Force Quarterly*, Issue 73 (2nd Quarter 2014), <http://www.dtic.mil/doctrine/jfq/jfq-73.pdf>

type of military authority used, the forces assigned to the mission, or the cyberspace capabilities used.<sup>11</sup>

## **1. Protect DODIN**

The DODIN operations mission includes operational actions taken to secure, configure, operate, extend, maintain, and sustain DOD cyberspace and to create and preserve the confidentiality, availability, and integrity of the DODIN. These include proactive cyberspace security actions which address vulnerabilities of the DODIN or specific segments of the DODIN. It also includes the set-up of tactical networks by deployed forces to extend existing networks, maintenance actions and other non-security actions necessary for the sustainment of the DODIN, and the operation of red teams and other forms of security evaluation and testing.

DODIN operations are network-focused and threat-agnostic: the cyberspace forces and workforce undertaking this mission endeavor to prevent all threats from negatively impacting a particular network or system they are assigned to protect. They are threat-informed and use all available intelligence about specific threats to improve the security posture of the network. DODIN operations does not include actions taken under statutory authority of a chief information officer (CIO) to provision cyberspace for operations, including IT architecture development; establishing standards; or designing, building, or otherwise operationalizing DODIN IT for use by a commander.<sup>12</sup>

Cyberspace security actions are a primary component action of the DODIN operations mission. Examples of cyberspace security actions include increasing password strength, installing a software patch to remove vulnerabilities, encrypting stored data, training users on cyberspace security best practices, restricting access to suspicious Web sites, or blocking traffic on unused router ports.<sup>13</sup>

Service-retained cyberspace forces, CCMD cyberspace forces, RC forces, and DOD agency and activity staffs execute much of the DODIN operations required to secure and operate the various backbones, sub-nets, segments, enclaves, and private networks of the DODIN under the planning, direction, integration, and synchronization of the JFHQ-DODIN.

## **2. Defensive Cyberspace Operations (DCO)**

DCO missions are executed to defend the DODIN, or other cyberspace DOD cyberspace forces have been ordered to defend, from active threats in cyberspace. Specifically, they are missions intended to preserve the ability to utilize blue cyberspace capabilities and protect data, networks,

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<sup>11</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

cyberspace-enabled devices, and other designated systems by defeating on-going or imminent malicious cyberspace activity.

DCO missions, which defeat specific threats that have bypassed, breached, or are threatening to breach security measures, are distinguishable from DODIN operations, which endeavor to secure DOD cyberspace from all threats in advance of any specific threat activity. DCO are threat-specific and frequently support mission assurance objectives. DCO missions are conducted in response to specific threats of attack, exploitation, or other effects of malicious cyberspace activity and leverage information from maneuver, intelligence collection, counterintelligence (CI), law enforcement (LE), and other sources as required. DCO include outmaneuvering or interdicting adversaries taking or about to take actions against defended cyberspace elements, or otherwise responding to imminent internal and external cyberspace threats. The goal of DCO is to defeat the threat of a specific adversary and/or to return a compromised network to a secure and functional state.

The components of DCO are DCO-Internal Defensive Measures (DCO-IDM), Defensive Cyberspace Operations-Response Actions (DCO-RA), and Defense of Non-DOD Cyberspace.

**DCO-IDM.** DCO-IDM are those actions taken internally to friendly cyberspace.<sup>14</sup> DCO-IDM are the form of DCO mission where authorized defense actions occur within the defended network or portion of cyberspace. It includes pro-active and aggressive internal threat hunting for advanced and/or persistent threats, as well as the active internal countermeasures and responses used to eliminate these threats and mitigate their effects. For example, CPT operations conducted on key terrain in cyberspace for mission-critical assets in response to indications of malicious cyberspace activity are DCO-IDM missions, even before indicators of compromise exist.<sup>15</sup> In other words, DCO-IDM include hunting on friendly cyber terrain for threats attempting to evade security protocols and directing appropriate internal responses.<sup>16</sup>

Cyberspace defense actions are the component actions of a DCO-IDM mission. Cyberspace defense actions are taken within protected cyberspace to defeat specific threats that have breached or are threatening to breach the cyberspace security measures and include actions to detect, characterize, counter, and mitigate threats, including malware or the unauthorized activities of users, and to restore the system to a secure configuration.<sup>17</sup> Internal countermeasures are cyberspace defense actions taken as part of a DCO-IDM mission; for example, closing router

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<sup>14</sup> Williams, The Joint Force Commander's Guide to Cyberspace Operations

<sup>15</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>16</sup> Williams, The Joint Force Commander's Guide to Cyberspace Operations

<sup>17</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

ports being used by an adversary for unauthorized access or blocking malware that is beaconing out of the DODIN.<sup>18</sup>

**DCO-RA.** DCO-RA are the form of DCO mission where actions are taken external to the defended network or portion of cyberspace **without the permission of the owner of the affected system.** DCO-RA actions are normally in foreign cyberspace.<sup>19</sup> DCO-RA are taken outside the DODIN to stop or block the attack. Cyberspace exploitation actions and cyberspace attack actions are taken as part of a DCO-RA mission.<sup>20</sup> An example of DCO-RA is shutting down an external router from which malicious activity is emanating. Some DCO-RA missions may include actions that rise to the level of use of force, with physical damage or destruction of enemy systems. DCO-RA missions require a properly coordinated military order and careful consideration of scope, rules of engagement, and measurable objectives.<sup>21</sup> In other words, DCO-RA include activities outside friendly network space to stop an attack before it reaches our key cyber terrain.<sup>22</sup>

To use a metaphor, we “catch arrows” with DCO-IDM and we “kill the archer” with DCO-RA.

**Defense of Non-DOD Cyberspace.** DCO generally focus on the DODIN which includes all of DOD cyberspace. However, military cyberspace forces prepare to defend any US or other blue cyberspace when ordered. DOD operations rely on many non-DOD segments of cyberspace, including private sector and mission partner networks, security of which is the responsibility of the resource owners, including other USG departments and agencies, private sector entities, and other partners. Since DOD associated cyberspace are known targets for malicious cyberspace activity, protection of these non-DOD networks and systems can be a vital component of mission assurance. However, DOD cannot guarantee the robustness of the security standards applied to such networks. The commander’s mission risk analysis should account for this uncertainty in the security of non-DOD cyberspace.

When required under a specific authorizing order, *and in full coordination with DHS and other USG departments and agencies*, DOD cyberspace forces undertake DCO-RA and DCO-IDM missions to defend these and other non-DOD cyberspace segments, like national CI/ KR or partner networks. Prioritization schemes for defense of CI/ KR should be established in advance. If DCO-IDM missions are ordered as part of a defense support of civil authorities (DSCA)

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<sup>18</sup> Ibid.

<sup>19</sup> Williams, The Joint Force Commander’s Guide to Cyberspace Operations

<sup>20</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>21</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>22</sup> Williams, The Joint Force Commander’s Guide to Cyberspace Operations

operation, Active Component forces may be supported by National Guard (NG) forces activated under Title 32 if authorized by SecDef, or in Title 10.<sup>23</sup>

### 3. Offensive Cyberspace Operations (OCO)

OCO are CO missions intended to project power in and through foreign cyberspace through actions taken in support of CCDR or national objectives. All CO missions conducted outside of blue cyberspace with a commander’s intent other than to defend blue cyberspace from an ongoing or imminent cyberspace threat are OCO missions. Some OCO missions may include actions that rise to the level of use of force, with physical damage or destruction of enemy systems. OCO missions require a properly coordinated military order and careful consideration of scope, ROE, and measurable objectives.<sup>24</sup> Cyberspace exploitation actions and cyberspace attack actions are taken as part of an OCO mission.<sup>25</sup> An example of OCO is hacking an adversary’s computer without the owner’s knowledge or consent. Authorities governing OCO activities are classified and a detailed description is outside the scope of this handbook. However, briefly stated, OCO represents a synergy between Title 50 (national intelligence) authorities to collect signals intelligence, and Title 10 (military) authorities to apply force in that realm. For full situational awareness and to advise on mission capability and authority, Judge Advocates must obtain the appropriate security clearance to fully understand the DoD cyber missions, including classified portions of the missions.

The following table illustrates where each cyber activity falls into the DoD cyber mission.

DoD Cyber Mission	Cyber Activity
DCO-IDM	Cyberspace security Cyberspace defense Internal countermeasures
OCO DCO-RA	Cyberspace exploitation, including military intelligence activities, maneuver, information collection, and other enabling actions requires to prepare for future military operations External countermeasures
OCO DCO-RA	Cyberspace attack: Deny (degrade, disrupt, destroy) Manipulate External countermeasures

<sup>23</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>24</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>25</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

## **C. DoD Cyber Mission Force (CMF)**

SecDef and CJCS established the CMF to organize and resource the force structure required to conduct key cyberspace missions.<sup>26</sup> The active component CMF is comprised of cyber operators organized into 133 teams primarily aligned as follows: Cyber Protection Force (CPF), Cyber National Mission Force (CNMF), and Cyber Combat Mission Force (CCMF). Combatant commands integrate CMTs and CPTs into plans and operations and employ them in cyberspace, while the National Mission Team (NMT) operates under the Commander of USCYBERCOM.

### **1. Cyber Protection Force (CPF)**

The CPF conducts CO for internal protection of the DODIN or other blue cyberspace when ordered. The CPF consists of cyberspace protection teams (CPTs) organized, trained, and equipped to defend assigned cyberspace in coordination with and in support of segment owners, cybersecurity service providers (CSSPs), and users.<sup>27</sup>

While mobilized in Title 10, CPTs provide surge support to active duty cyber component (such as USCYBERCOM, AFCYBER, or ARCYBER) and support defensive cyberspace operations by removing adversary capabilities, defending the supported commander's key cyberspace terrain and critical assets, and preparing local cyberspace defenders to sustain advanced cyberspace defense tactics, techniques and procedures (TTP). CPTs are the forces tasked with the DCO-IDM mission under USCYBERCOM.<sup>28</sup>

While in a Title 32 dwell status, members of the CPTs train for the federal mission.<sup>29</sup>

### **2. Cyber National Mission Force (CNMF)**

The CNMF conducts CO to defeat significant cyberspace threats to the DODIN and, when ordered, to the nation. The CNMF comprises various numbered national mission teams (NMTs), associated national support teams (NSTs), and national-level CPTs for protection of non-DODIN

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<sup>26</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>27</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>28</sup> Williams, The Joint Force Commander's Guide to Cyberspace Operations

<sup>29</sup> CPT is the term used when that unit is mobilized.

blue cyberspace.<sup>30</sup> NMTs are the forces tasked with the DCO-RA mission under USCYBERCOM.<sup>31</sup>

DCO-RA missions are normally assigned to NMTs, which are tactical units of the CNMF that defend the DODIN, or other blue cyberspace when ordered. NSTs provide specialized technical and analytic support for the units of the CMF, including intelligence analysis, cyberspace capability development, linguist support, and planning.<sup>32</sup>

### **3. Cyber Combat Mission Force (CCMF)**

The CCMF conducts CO to support the missions, plans, and priorities of the geographic and functional CCDRs. The CCMF comprises various numbered combat mission teams (CMTs) and associated combat support teams (CSTs).

OCO missions are normally assigned to CMTs, tactical units of the CCMF that support CCDR plans and priorities to project power in support of national objectives. CSTs provide specialized technical and analytic support for the units of the CMF, including intelligence analysis, cyberspace capability development, linguist support, and planning.<sup>33</sup>

### **4. Other Teams**

Other teams include Cyber Intelligence, Surveillance and Reconnaissance Squadrons; Information Aggressor Squadrons; Cyber Training Squadrons; and Data Processing Units, and have specific mission sets that have a nexus to DoD's cyber mission.

## **D. DCO-E**

The National Guard has Defensive Cyberspace Operations-Elements (DCO-E), which by design do not have an active component CMF mission. DCO-Es may provide surge capacity of the same capability of Title 10 assets but are prohibited from being mobilized, as a unit, for Title 10 missions. The DCO-E area of responsibility is that State's network enclave within GuardNet; in other words, the DCO-E defend that State's National Guard portion of DODIN. With proper authorization, DCO-Es may support a validated RFA to provide support outside of DODIN; however, personnel from the DCO-Es providing support and services outside of the validated RFA process must be in SAD and activated pursuant to State law.

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<sup>30</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>31</sup> Williams, The Joint Force Commander's Guide to Cyberspace Operations

<sup>32</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

<sup>33</sup> Joint Publication 3-12, Cyberspace Operations, 8 June 2018

## E. Title 32 Cyberspace Activities

The National Guard must have both proper fiscal authority and the mission authority to conduct cyberspace activities in a Title 32. The National Guard is funded by Congress to train for the federal mission. IDTs and annual training are conducted under 32 U.S.C. § 502(a) within an existing published training plan.<sup>34</sup> Additional training funds may be authorized under 32 U.S.C. § 502(f)(1), however such additional training is under scrutiny and limited. Finally, the President and the SecDef have authority to authorize operational missions under 32 U.S.C. § 502(f)(2).<sup>35</sup> The National Guard is prohibited from conducting DCO-RA and OCO. These activities must be conducted in a Title 10. Therefore, the National Guard can train for the federal mission in a Title 32 but is limited to DODIN operations and DCO-IDM activities. Title 32 training authorities can be leveraged to provide support to (1) active component, (2) civil authorities, and (3) other statutorily eligible entities.

**1. Support to Active Component.** The National Guard can provide incidental operational support (OS) while conducting training. The key is that the primary purpose of the activity must be military training.<sup>36</sup> DoDI 1215.06, para 6.2 encourages maximum Reserve Component utilization by stating, “all training duty planned and performed by Reserve Components members shall capitalize on Reserve Components capabilities to accomplish operational requirements while maintaining their mission readiness for domestic and overseas operations. RC members may be employed to support active component mission requirements as part of conducting training duty.” Additionally, “support to mission requirements, i.e., operational support (OS), may occur as a consequence of performing training.” Established and approved training plans cannot be altered to meet operational requirements. Units or individuals that participate in IDT or AT may provide incidental OS to DoD mission requirements; however, this should not be used as a façade to conduct actual operations nor as a substitute for mission assignments from the Department of Homeland Security (for example, through Federal Emergency Management Agency (FEMA) or the Cybersecurity and Infrastructure Security Agency (CISA) etc.) during or in preparation for disaster response. OS can be given to prescheduled, pre-determined mission requirements as long as documented and in accordance with the established approved training plan.

The OS should be considered only after determining the training value and ensuring the DoD mission is consistent with the already existing and approved training plan. Showing the predictability of training and validated training requirements will likely warrant less scrutiny on

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<sup>34</sup> Training plans must be IAW NGR 350-1 and ANGI 36-2001.

<sup>35</sup> Civil support teams, counterdrug, and homeland defense are operational missions authorized by statute that fall under 32 U.S.C. § 502(f)(2). There are currently no operational cyber missions.

<sup>36</sup> See DoDI 1215.06, Uniform Reserve, Training and Retirement Categories (19 May 2015) para 6.2.



the proper use of federal training funds. Activity where training value is not the primary purpose as determined by the NG commander is a violation of fiscal law and DoD policy.

There is a much narrower application of OS in OCO and DCO-RA activities. The following factors are suggested for Commanders to use when considering whether training which provides an incidental operational benefit is allowed, or in other words, whether the mission is appropriate for the National Guard or active component.

1. Whether performance of the federal operational mission is consistent with the unit's formalized training program.

2. Whether the federal mission can be performed without the National Guard unit. In other words, is the active component capable of performing the mission without support from the National Guard? If not, then the National Guard has moved beyond a support role into an operational role and is exceeding the scope of its authority.

3. Whether the use of full-time Guard personnel is disproportionate.

In order to determine these factors, the necessary facts must be present to identify the proposed task and duration of the task and whether the task fits into required individual or unit training; and if not whether the training will nevertheless benefit DoD. This analysis should consider policy issues with risk assessment and the appropriateness when using the NG.

OS likely collapses into actual operational missions for activities that fall under OCO and DCO-RA, i.e. cyberspace attack and cyberspace exploitation. Each activity would need to be independently assessed. Greater scrutiny is given for live Title 10 and Title 50 missions. Generally, if an activity requires affirmative positive authority to be conducted (such as under Title 10 or NSPM-13), then there likely is no Title 32 OS when the Title 32 unit is training for that METs; the OS ceases to exist and the training activity merges into the operations (i.e. the OCO or DCO-RA activity itself).

**2.a. Support to Civil Authorities – Generally.**<sup>37</sup> The National Guard can provide defense support to civil authorities, commonly referred to as DSCA, when a qualifying entity requests assistance.<sup>38</sup> DoD publications on DSCA focus on a response in Title 10 or 32 U.S.C. § 502(f)(2) status. Currently, DTM 17-007 is the only publication on DSCA for cyber operations, or Defense

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<sup>37</sup> 32 U.S.C. Chapter 9 and the implementing DoD publication recognizes homeland defense as an operational mission. A SecDef-approved Chapter 9 request would give Title 32 National Guardsmen authority for homeland defense activities in the cyber domain to protect and defend critical infrastructure outside of the Defense Industrial Base.

<sup>38</sup> DOD 3025 series of publications govern providing DSCA to a qualifying entity and primarily apply to response under Title 10 and 32 U.S.C. §502(f)(2).

Support to Cyber Incident Response (DSCIR).<sup>39</sup> DSCIR may be provided for a cyber incident in response to a request for assistance from a lead federal department or agency for asset response or threat response outside DODIN as described in PPD-41. This includes DSCIR for immediate response authority to save lives, prevent human suffering, or mitigate great property damage. Based on the nature of support, liability waivers, memorandums of understanding or agreements (including permission from asset owner to access appropriate information and information systems), non-disclosure agreements, or other appropriate legal documents requested by DoD must be signed before providing DSCIR. DSCIR does not preclude support to civil authorities in other statuses, such as training which provides an incidental operational benefit.

**2.b. Support to Civil Authorities – Intelligence Support to Law Enforcement.** Cyber teams likely have intelligence personnel assigned to them. Executive Order 12333 and associated Intelligence Oversight rules and procedures will apply if those intelligence personnel provide support to law enforcement. While any intelligence activities (including collection) must be done in Title 10 with proper mission and authority, SecDef approval is required for the use of intelligence assets for anything other than foreign intelligence, counterintelligence, or intelligence training. This includes training with an incidental benefit (i.e., OS). Intelligence support to law enforcement requires SecDef approval IAW Procedure 12 under DoD 5240.1-R.

**2.c. Support to Civil Authorities – Economy Act.** The Economy Act allows federal agencies to provide support to other federal agencies on a reimbursable basis, unless the support is provided in the normal course of training or operations, or the support results in a substantially equivalent training value.

**2.d. National Guard State Immediate Response.** DODD 3025.18 paragraph 4.j. recognizes the authority of State officials to direct a State Immediate Response (SIR) using National Guard personnel under State command and control including personnel in a title 32 states in accordance with State law, but such personnel may not be placed in or extended in Title 32 status to conduct SIR. This may include cyberspace operations.

**3. Other Entities.** DepSecDef PM 16-002, commonly referred to as the CTAA memo, provided guidance on the National Guard providing cyber support and services incidental to military training through Innovative Readiness Training (IRT) projects.<sup>40</sup> IRT projects have traditionally been used for engineering and construction projects (such as building a bike trail for a local government or fixing shelters for the Boy Scouts), or for providing medical care to underserved communities. The CTAA memo clarified that IRT includes cybersecurity projects. Specifically, the CTAA memo provides guidance that coordinating, training, advising, and

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<sup>39</sup> DTM 17-007 is set to expire on 21 June 2021 and will be converted to a new issuance.

<sup>40</sup> The CTAA memo expires on 1 March 2021 or when the overarching policy issues contained in the memo are contained in permanent DoD publication.

assisting certain qualifying mission partners must be done IAW IRT eligibility and program requirements under 10 U.S.C. § 2012.

It is important to note that CTAA memo does not preclude consultation or other methods of training under other authorities, such as the Economy Act and the Stafford Act.<sup>41</sup>

## **F. Intelligence Oversight (IO)**

As stated above, cyber teams likely have intelligence personnel assigned to them triggering Executive Order 12333 and associated Intelligence Oversight rules and procedures. In determining whether IO rules apply, look to the people, pipes, process, platforms, purpose, and purchase (or funding source) for the activity. The facts drive the analysis and determination of whether IO applies to that cyber activity:

**People.** Are intelligence personnel being used at any point to provide any capability or assistance from the tasking through delivery of the product to the client?

**Pipes.** Are any intelligence systems being used at any point to disseminate or collect the information?

**Process.** Are intelligence capabilities/units/personnel being used at any point to exploit or process the data collected and/or generate a product?

**Platform.** Is either the platform or sensor owned or operated by an intelligence person?

**Purpose.** What is the intended purpose for which the platform/capability is being used and who is the ultimate client/recipient of data or products generated?

**Purchase.** Was the platform/operation purchased with NIP or MIP funds?

If the response to the above questions indicates intelligence involvement, those cyber teams need to be cautious in proceeding with their training or mission to comply with Intelligence Oversight rules, including requiring SecDef approval for use of intelligence equipment for a non-intel purpose.

The key to the analysis of whether data collection is an intelligence activity is the definition of intelligence. JP 1-02 defines intelligence as “the product resulting from the collection, processing, integration, evaluation, analysis, and interpretation of available information concerning foreign nations, hostile or potentially hostile forces or elements, or areas of actual or

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<sup>41</sup> Outside of CTAA activities, the CTAA memo provides guidance that consulting with government entities and with public and private utilities, critical infrastructure owners, the Defense Industrial Base, and other non-governmental entities, as needed, in order to protect DODIN, software, and hardware, enhance DOD cyber situational awareness, provide for DOD mission assurance requirements, and provide cybersecurity unity of effort are **outside** the context of CTAA training activities.

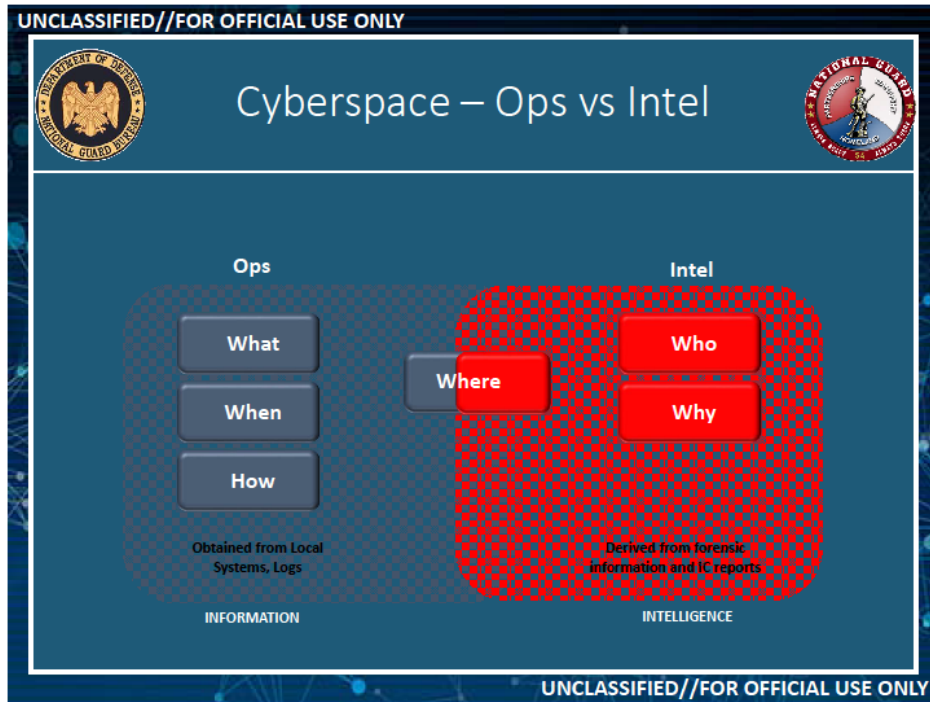
potential operations.” JP 2-0 further distinguishes intelligence from information, in that intelligence “allows anticipation or prediction of future situations and circumstances, and it informs decisions by illuminating the differences in available courses of action.” JP 3-12, Cyberspace Operations, recognizes that intelligence may be derived from information gained during military operations in cyberspace or from other sources. Cyberspace operations are the employment of cyberspace capabilities where the primary purpose is to achieve objectives in or through cyber-space.

In short, the DoD defines intelligence as information regarding an adversary AND the process used to produce that information. Getting information on what happened, when an incident occurred, and how an incident occurred from local system logs is likely data and at most information. Where an incident occurred can be both information and intelligence depending on where the compromised network is located. Who causes an incident and why an incident occurred falls into intelligence.

For example, an operator tracing an Internet Protocol (IP) address to a specific foreign or domestic actor or collecting data during an incident is likely not an intelligence activity. This would only be a data collection. However, if the data is tied to a known signature and there is additional data with corresponding analysis to indicate that the activity is part of a broader

scheme, then you may be crossing the line into an intelligence activity. The following graph will help illustrate when data turns into intelligence.

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### National Cyber Incident Response Plan (NCIRP)

The National Preparedness System (NPS) outlines an organized process for the whole of community to move forward with their preparedness activities and achieve the National Preparedness Goal. The NPS integrates efforts across five areas – Prevention, Protection, Mitigation, Response, and Recovery.

Presidential Policy Directive (PPD)-41: U.S. Cyber Incident Coordination set forth principles governing the Federal Government’s response to any cyber incident, provide an architecture for coordinating the response to significant cyber incidents, and required DHS to develop the NCIRP to address cybersecurity risks to critical infrastructure. The NCIRP is part of the broader NPS and establishes the strategic framework and doctrine for a whole-of-Nation approach to mitigating, responding to, and recovering from a cyber incident.

The DOJ is the lead federal agency for threat response during a significant cyber incident, acting through the FBI and National Cyber Investigative Joint Task Force. DHS is the lead federal agency for asset response during a significant cyber incident, acting through the National

Cybersecurity and Communications Integration Center (NCCIC). Threat response, asset response, and significant cyber incident are defined by PPD-41.

The NCIRP states that the DoD is responsible for threat response to cyber incidents affecting DoD assets and DODIN. DoD can also support civil authorities for cyber incidents outside the DODIN when requested by the lead federal agency, and approved by the appropriate DoD official, or directed by the President. Such support would be provided based upon the needs of the incident, the capabilities required, and the readiness of available forces.

DHS, in coordination with the heads of other appropriate federal departments and agencies and in accordance with the NCIRP is required to regularly update, maintain, and exercise the Cyber Incident Annex to the National Response Framework (NRF). The NRF is part of the NPS and is a guide on how the Nation responds to all types of disaster and emergencies. The NRF contains 15 Emergency Support Functions (ESF) and annexes that describe the Federal coordinating structures to group resources and capabilities into functional area that are most frequently needed in a national response. Cyber capabilities most likely will fall under ESF #2, communications under the responsibility of DHS's Cybersecurity and Infrastructure Security Agency (CISA)<sup>42</sup>.

## **H. State Active Duty (SAD)**

Personnel in SAD are under the command and control of the Governor. State laws govern issues in discipline, ethics, information protection, privacy, and liability, but certain federal laws may apply in areas, such as HIPAA and Computer Fraud and Abuse Act. States cannot engage in international warfare, i.e., a State cannot attack a foreign country by cyber or kinetic means. Any DCO-RA or OCO activities must be carefully reviewed and should receive a written opinion from the State Attorney General in order to set parameters of activities.

DoD rules generally do not apply to SAD personnel, but may still apply to use of equipment procured through a federal trace, including reimbursement requirements for the use of USG equipment. Some of the cyberspace equipment or programs may be limited to federal use for federal systems and therefore would not be authorized for State use in a SAD or outside of the DODIN. E.O.s 12968 and 13549 as amended and DoD implementing guidance govern access and use of DoD information networks, software, hardware, systems, tools, tactics, techniques, and procedures beyond the classification level of SECRET and is prohibited in SAD.

**SAD Access to Federal Security Clearances.** Security clearances, including eligibility for, access to, and need to know determinations, are governed by E.O.s 12968 and 13549 to ensure

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<sup>42</sup> CISA is responsible for protecting the Nation's critical infrastructure from physical and cyber threats. CISA's National Cybersecurity and Communications Integration Center (NCCIC) provides 24x7 cyber situational awareness, analysis, incident response and cyber defense capabilities to the Federal government; state, local, tribal and territorial governments; the private sector and international partners. CISA provides cybersecurity tools, incident response services and assessment capabilities to safeguard the networks that support the essential operations of federal civilian departments and agencies.

proper safeguarding of information shared with State, local, tribal, and private sector entities (SLTPS). Blanket access to a DoD security clearance for State use is not authorized. State use of DoD security clearances must conform to the laws and DoD policies governing access to and protection of Federal Government classified information and systems, and controlled unclassified information and systems. Access to DoD security clearances can be granted by a federal sponsor on a case-by-case, mission-specific basis if the following requirements have been met:

- NG member in SAD has an adjudicated DoD security clearance;
- NG member in SAD is carrying out a federal sponsor mission;
- Federal sponsor determines that that member has a “need for access” and “need to know” to carry out the assigned mission; and
- Federal sponsor has security cognizance over the assigned mission.

Currently, DoD has delegated the authority to sponsor access to DoD security clearances to USCYBERCOM.

## **I. Federal Laws Governing Cyber Activities**

National Guard personnel may be subject to federal criminal laws if they exceed the scope of their mission.<sup>43</sup> This is particularly important for National Guard personnel as they may only perform DCO-IDM activities. National Guard personnel may only perform actions on a network when they have permission from the network owner to do so, otherwise, they may be subject to federal and/or state criminal laws.

### **1. Electronic Communications Privacy Act (18 U.S.C. §§ 2510-2523)**

The Electronic Communications Privacy Act and the Stored Wire Electronic Communications Act are commonly referred together as the Electronic Communications Privacy Act (ECPA) of 1986. The ECPA updated the Federal Wiretap Act of 1968, which addressed interception of conversations using "hard" telephone lines, but did not apply to interception of computer and other digital and electronic communications. Several subsequent pieces of legislation, including The USA PATRIOT Act, clarify and update the ECPA to keep pace with the evolution of new communications technologies and methods, including easing restrictions on law enforcement access to stored communications in some cases.

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<sup>43</sup> The Computer Fraud and Abuse Act, Wiretap Act, Pen Trap and Trace Act, and Stored Communications Act are the most common federal laws governing cyber activities. Other federal laws that are relevant include the Privacy Act, HIPAA, and FOIA. For further reading, see Congressional Research Service (CRS) Report R42507, Federal Laws Relating to Cybersecurity: Overview of Major Issues, Current Laws, and Proposed Legislation, by Eric. A Fischer.

### **A. Wiretap Act (18 U.S.C. § 2511)**

The Wiretap Act prohibits the intentional interception of any wire, oral, or electronic communication. It also prohibits intentional disclosure or use of the contents of any wire, oral, or electronic communication while knowing or having reason to know that the information was obtained illegally. The Wiretap Act focuses on real-time content.

### **B. Stored Communications Act (18 U.S.C. § 2701)**

The Stored Communications Act governs unlawful access to stored communications by prohibiting (a) intentionally accessing, without authorization, of a facility through which an electronic communication service is provided; or (b) intentionally exceeding an authorization to access that facility and thereby obtaining, altering, or preventing authorized access to a wire or electronic communication while it is in electronic storage in such system.

It protects the privacy of the contents of files stored by service providers and of records held about the subscriber by service providers, such as subscriber name, billing records, or IP addresses. The Stored Communications Act focuses on past content and records.

### **C. Pen Register and Trap and Trace Act (18 U.S.C. § 3121)**

The Pen Register and Trap and Trace Act prohibits the real-time interception of the non-contents of communications by a pen register or a trap and trace device without first obtaining a court order. However, the prohibition does not apply to a service provider for the operations, maintenance, and testing of the service. It also does not apply to a service provider in the protection of the rights or property of such service provider, or to the protection of users of that service from abuse of service or unlawful use of service. The Pen Register and Trap and Trace Act focuses on real-time non-content.

## **2. Computer Fraud and Abuse Act (18 U.S.C. § 1030)**

The Computer Fraud and Abuse Act was added to Title 18, Chapter 47 – Fraud and False Statements in 1984 as fraud and related activity in connection with computers. It prohibits, among other things, the theft of information through unauthorized access or exceeded authorization on a “protected” computer. A protected computer is a computer that is (a) exclusively used by a financial institution or USG; or used by financial institute or USG and conduct that affects that use; or (b) used in or affecting interstate or foreign commerce or communication, including computers outside the United States, and conduct that affects that use.

The Computer Fraud and Abuse Act also prohibits damage by (a) knowingly causing the transmission of a program, information, code, or command, and as a result of such conduct, intentionally causes damage without authorization, to a protected computer; (b) intentionally accessing a protected computer without authorization, and as a result of such conduct, recklessly causes damage; or (c) intentionally accessing a protected computer without authorization, and as a result of such conduct, causes damage and loss.



Overall, CFAA is concerned with trespass, theft, and damage. The crux of whether a Title 32 NG person would violate the CFAA is whether that person's activities is beyond the scope of authorized access. Each situation would be fact specific and can be scoped through the rules for the use of cyber and a memorandum of agreement or understanding.

## **J. Judge Advocate Responsibilities**

The National Guard can partner with federal agencies, such as Department of Homeland Security, through the Economy Act or National Response Framework, just like any other incident response preparation through the National Preparedness System. In the cyberspace domain, there are unique rules for the use of cyber that need to be reviewed and agreed upon by the National Guard and the asset owner through Memoranda of Understanding/ Agreement and Nondisclosure Agreements. It is key to develop relationships with the State Attorney General's office to be aware of any state specific rules that may apply as well as the constraints that apply to federal equipment. Some of the issues to consider are:

- written permission from asset/network owner to access their system
- scope of assistance to be provided (assessment and report finding; mitigation and remediation; responses outside scope of assistance)
- status of military personnel (SAD, Title 32), command and control, and legal basis for disciplinary actions
- destruction/storage of data obtained, to include privacy and security restrictions
- confidentiality of proprietary data or information (i.e., certain federal cyber equipment may report all data to USCYBERCOM)
- whether the system will only scan or actively respond to the adversary action (i.e., hack or hackback which is prohibited outside of Title 10)
- privacy balanced with required disclosure of criminal/fraudulent activity
- privacy of network users (union, contractor, etc.)
- privacy of business to not publicize discovered activity requiring criminal investigation
- industry regulatory requirements to disclose incident
- liability for unintended impact to operations
- Intelligence Oversight requirements (i.e., collection of USPI)
- payment for services (look to the FAR and DFARS for specific requirements)
- disputes resolution mechanism
- conflicts of interest (use of a proprietary tool in which a National Guardsman may have personal pecuniary interest)
- licensing limitations for use of a cyberspace capability and data rights for TTPs or software developed in conjunction with private entities as part of a cyber response or exercise
- other relevant laws (State specific, Privacy, HIPAA, FOIA, FTCA, etc.)

The laws governing cyber activities are constantly changing in response to new technology and uses of cyber capabilities in warfare. It is critical to ensure the latest laws are examined when advising in this new and ever evolving area of the law. If you are addressing an issue involving the cyber law, you should seek out additional expertise to assist you in this complicated area.

Key References:

- a) *National Security Presidential Memorandum 13*, 2018
- b) Support and services for eligible organizations and activities outside Department of Defense, 10 U.S.C. § 2012 *et seq.*
- c) *The Computer Fraud and Abuse Act*, 18 U.S.C. § 1030 *et seq.*
- d) *Electronic Communications Privacy Act of 1986* (ECPA), 18 U.S.C. §§ 2510-2523.
- e) *The Wiretap Act*, 18 U.S.C. § 2511 *et seq.*
- f) *The Stored Communications Act*, 18 U.S.C. § 2701 *et seq.*
- g) *The Pen Trap and Trace Act*, 18 U.S.C. § 3121 *et seq.*
- h) Executive Order (E.O.) 12333 - *U.S. Intelligence Activities*, December 4, 1981, as amended by E.O. 13284 (2003), EO 13355 (2004) and EO 13470 (2008).
- i) E.O. 13636, *Improving Critical Infrastructure Cybersecurity*
- j) *National Guard*, 32 U.S.C. § 502 *et seq.*
- k) Presidential Policy Directive 41, *United States Cyber Incident Coordination*, 26 July 2016
- l) Department of Defense, *Cyber Strategy*, (Washington, D.C. 2018)
- m) Department of Defense Directive (DoDD) 1100.20, *Support and Services for Eligible Organizations and Activities Outside the Department of Defense*, 12 April 2004
- n) DoDD 3025.18, *Defense Support of Civil Authorities (DSCA)*, 29 December 2010, Incorporating Change 2, 19 March 2018
- o) DoDD 5240.01, *DOD Intelligence Activities*, 27 August 2007, Incorporating Change 2, 22 March 2019
- p) DoDD 5148.13, *Intelligence Oversight*, 26 April 2017
- q) Department of Defense Instruction (DoDI) 1215.06, *Uniform Reserve, Training and Retirement Categories*, 11 March 2014, Incorporating Change 1, Effective 19 May 2015
- r) DoDI 3025.21, *Defense Support of Civilian Law Enforcement Agencies*, 27 February 2013 Incorporating Change 1, Effective 8 February 2019
- s) DoDI 3025.22, *The Use of National Guard for Defense Support of Civil Authorities*, 26 July 2013, Incorporating Change 1, Effective 15 May 2017
- t) DoDI 4000.19, *Support Agreements*, 25 April 2013, Incorporating Change 2, 31 August 2018
- u) DoD Manual 5240.01, *Procedures Governing the Conduct of Intelligence Activities*, 8 August 2016
- v) DoD 5240.1-R, *Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons*, December 1982, Incorporating Change 2, Effective 26 April 2017
- w) Joint Publication 3-12, *Cyberspace Operations*, 8 June 2018
- x) Directive Type Memorandum (DTM) 17-007, *Interim Policy and Guidance for Defense Support to Cyber Incident Response*, 21 June 2017, Incorporating Change 2, 6 June 2019
- y) Deputy Secretary of Defense (DepSecDef) Policy Memorandum (PM) 16-002, *Cyber Support and Service Provided Incidental to Military Training and National Guard Use of DOD Information Networks, Software, and Hardware for State Cyberspace Activities*, 24 May 2016;

- z) Extension of Policy Memorandum 16-002, *Cyber Support and Services Provided Incidental to Military Training and National Guard Use of DoD Information Networks, Software, and Hardware of State Cyberspace Activities*, 1 March 2018
- aa) Exception to Policy Memorandum 16-002, *Cyber Support and Services Provided Incidental to Military Training and National Guard Use of DoD Information Networks, Software, and Hardware for State Cyberspace Activities*, 18 October 2018
- bb) Transition of Policy Memorandum 16-002, *Cyber Support and Services Provided Incidental to Military Training and National Guard Use of DoD Information Networks, Software, and Hardware for State Cyberspace Activities*, 21 March 2019
- cc) SecDef Memorandum, *Leveraging Military Training for Incidental Support of Civil Authorities*, 16 Dec 2013
- dd) *National Guard Cyber Strategy*, 5 Jan 2018
- ee) National Guard Regulation (NGR) 5-2, *National Guard Support Agreements*, 14 Oct 2010
- ff) NGR 350-1, *Army National Guard Training*, 4 August 2009
- gg) Air National Guard Instruction 36-2001, *Management of Training and Operational Support within the Air National Guard*, 30 April 2019
- hh) OpJAGAF 2005/36, 28 July 2005, AIR NATIONAL GUARD JAO
- ii) Department of Homeland Security, *National Response Framework*, October 2019
- jj) Department of Homeland Security, *National Cyber Incident Response Plan*, December 2016

**INFORMATION PAPER**

**SUBJECT: SPACE-A TRAVEL FOR UNACCOMPANIED NG DEPENDENTS**

**PURPOSE:** To provide guidance regarding Space-Available (Space-A) travel for NG dependent family members (spouse and child(ren)).

**KEY POINTS:**

- Space-A travel allows authorized passengers to occupy DoD aircraft seats that are surplus after all Space Required (Space-R) passengers have been accommodated. Eligibility requirements for transportation on DoD aircraft are set forth in DoD Instruction 4513.13, “Air Transportation Eligibility,” 22 January 2016, Change 7, 11 January 2024. See DoDI 4513.13, para 4, for specific Space-A guidance and eligibility criteria. \
- Subject to certain exceptions, dependents of drilling Reservists are generally ineligible for Space-A travel. In instances where dependent travel is authorized, dependents must generally be accompanied by their sponsor. See DoDI 4513.13, para 4.9, “Dependent Travel.”
- Pursuant to Section 12 of DoDI 4513.13, CNGB serves as an Approval Authority for passenger movements not covered by DoDI 4513.13. Pursuant to para 12.2 of the reference, “approval authorities must consider all aspects of the transportation request.” In relevant part, all requests must include the following:
  - Purpose for the transportation being requested;
  - Justification explaining why the transportation is in the best interest of the DoD or of the DoD Component concerned;
  - The cost of commercial airlift and a statement explaining why commercial transportation resources are not available or, if available, cannot meet the mission requirement. Cost alone is insufficient justification for not using commercial transportation service;
  - The estimated cost of DoD airlift by aircraft type; and
  - A statement that the requested transportation is on a Space-R or a non-interference basis and whether it will be provided on a reimbursable or non-reimbursable basis to the organization or individual receiving the transportation. For reimbursable travel requests, the request must include the appropriation, account chargeable, or name and address of the organization or individual

responsible for payment. For non-reimbursable requests, the request must include a justification explaining why the transportation will not be reimbursed.

Sample request language that addresses the foregoing criteria

- The purpose for the transportation requested is to transport the immediate family members of a Guardsman, all of whom are victims of the recent hurricanes affecting the area and who are currently stranded homeless on the island with limited life sustaining resources.
- The transportation is in the best interest of the National Guard as it will ensure the readiness and mission-capability of a Guardsman who would otherwise be preoccupied with the welfare of his or her dependent family members. Further, the effort will assist in building confidence in family readiness and support programs.
- The cost of commercial airlift is unknown at this time as there are no flights out of the affected area for commercial passengers. In looking at flights that may be available in the future, the median cost for a one-way trip, per passenger, is \$X. Estimates indicate that commercial airlift will remain unavailable for several months and will not be reinstated until X date.
- The estimated cost of DoD airlift by aircraft type is \$X.
- The unit requests that the transportation, if approved, be provided on a non-interference and non-reimbursable basis to the individual(s) receiving the transportation. The primary justification for providing transportation without reimbursement is that the family of the Guardsman has just suffered a tremendous economic loss as a result of the hurricanes. The unexpected expense of having to pay for air travel, whether commercial or through reimbursement to the organization, would cause additional financial and emotional hardship. Further, any additional cost to the organization by adding X passenger(s) to an already scheduled flight is de minimis.
- Travel on a non-interference, non-reimbursable basis may be approved by CNGB subject to his or her finding that the transportation is in the best interest of the NG.

IP – Use of NG Title 5 Civilian Directors of Psychological Health Personnel in Domestic Operations

**INFORMATION PAPER**

SUBJECT: USE OF NG TITLE 5 CIVILIAN DIRECTORS OF PSYCHOLOGICAL HEALTH PERSONNEL IN DOMESTIC OPERATIONS

PURPOSE: Authorities under which National Guard may Title 5 civilian Director of Psychological Health (DPH) personnel in domestic operations.

KEY POINTS:

- Scope of DPH Position Description (PD)

The primary purpose of the DPH position is to provide operations related leadership consultation, direct client services, community capacity building, preventive, remedial and support services aimed at improving and sustaining the psychological health of National Guard Members and their families.

Clinical and administrative duties focus on outreach, education and prevention, and needs-based psychosocial assessment, diagnosis and short-term problem resolution. DPHs are also tasked with the provision of short-term solution-focused interventions, and referral for, evidence-based interventions.

DPHs also ensure clinical mental health services provided are integrated with other counseling and support services available at the installation, Federal, State, and Territorial level, and military and non-military organizations (i.e., Military OneSource, Military and Family Life Consultants, and TRICARE Network). Therefore, the domestic operations mission scope is within the terms of the DPH PD.

- Title 5 DPH's are legally authorized to assist NG military service members without the statutory limitations imposed on Title 32 Technicians.

Title 5 civilians, unlike Title 32 technicians, are not constrained by the statutory restrictions of the Technician Act (32 U.S.C. § 709) to organize, administer, instruct, or train the National Guard within their state (32 U.S.C. § 709(a)(1). Nor are they limited to maintenance and repair of supplies issued to the National Guard or the armed forces (32 U.S.C. § 709(a)(2); and the performance of additional duties as assigned by competent authority on a non-interference basis (32 U.S.C. § 709(a)(3). Therefore, in this context Title 5 personnel have greater potential use for a broad spectrum of missions than Title 32 technicians.

- Title 5 DPH's are employees of the United States and therefore are covered by the Federal Torts Claims Act for any alleged negligence or malpractice in the performance of their employment

The scope of the mission appears to be within the scope of employment for the DPH PD. Subsequently should a DPH be sued in their official capacity for the performance of their duties they are likely to be scoped, substituted by the US and represented by DOJ. DOJ has historically represented Title 5 and Title 32 professionals in malpractice and licensure complaints when the professional was acting within the scope of their employment based on the law of state in which the malpractice or negligence occurred.

Therefore, the scope of the Title 5 DPH mission as outlined by the Joint Surgeon General appears to be within the scope of DPH Title 5 employment, and legally sufficient.

Key Resource:

- a) 32 U.S.C. § 709, *Technicians: employment, use, status*

IP – Transport of pets and service animals on MILAIR

**INFORMATION PAPER**

SUBJECT: TRANSPORT OF PETS AND SERVICE ANIMALS ON MILAIR

PURPOSE: Discuss authorities, restrictions, and considerations of ANG transportation of pets and trained service animals, accompanied by owners, from disaster areas.

KEY POINTS:

- DoDI 4515.13, “Air Transportation Eligibility” permits the transportation of service animals when accompanying a passenger who is authorized transportation.
  - Service Animals are “a dog, regardless of breed type, that is individually trained to do work or perform tasks for the benefit of a qualified individual with a disability, to include a physical, sensory, psychiatric, intellectual, or other mental disability.”
  - Animal species other than dogs, emotional support animals, comfort animals, companionship animals, and service animals in training are not service animals for the purposes of Part 382.3 of Title 14, CFR and DoDI 4515.13.
  - A service animal may be removed from the premises if the handler cannot control the animal or the animal poses a threat to the health or safety of passenger service personnel, the aircraft crew, or other travelers.
  - Passengers with pets may travel in an evacuation authorizing space-required travel. Passengers traveling in a space-available status are not permitted to ship pets.
  - Pets are dogs and cats only. Other animals, such as horses, fish, birds, and rodents, are excluded as pets under DoDI 4515.13.
- Other animals owned by DoD such as military working dogs will be moved as cargo and their movement is not restricted by DoDI 4515.13.
  
- Transportation may be disapproved by the chief of the passenger travel section or the aircraft commander if there is an unacceptable risk to the safety or health of the disabled passenger or other passengers or crew, or if operational necessity, equipment, or manpower limitations preclude accepting a disabled passenger, service animal, or mobility assistance device. The aircraft commander is the final approval authority on all matters relating to flight safety.



Key References:

1. DoDI 4515.13, *Air Transportation Eligibility*, 22 January 2016 Change 5 effective 23 October 2020
2. Title 14 CFR 382.3, *Air Carrier Access Act*

## IP – Transport of Donated Goods on MILAIR

### INFORMATION PAPER

SUBJECT: Transport of Donated Disaster Relief Goods on MILAIR

PURPOSE: To discuss whether NG can provide airlift of disaster relief supplies, donated by private citizens, to affected areas for hurricane relief.

#### KEY POINTS:

- SAD – Under NGB regulations, the Governor/TAG is empowered to employ ARNG/ANG aircraft on SAD, with State funds, and under the command of the Governor pursuant to State law, to perform disaster relief operations. If State law permits, disaster relief operations on SAD can include the transport of disaster relief supplies donated by private citizens.
- Title 32 Operational Support
  - The Stafford Act authorizes POTUS to “direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal Law” in support of State and local response efforts for emergencies and recovery efforts for major disasters. Tasking authority is delegated to the FEMA Administrator.
  - The FEMA Administrator issues Mission Assignments (MA) to federal agencies (such as DoD) to support State and local emergency response efforts. Assuming FEMA approves an MA to DoD for transport of disaster relief supplies donated by private citizens, then DoD would need to determine whether the NG airlift is the best sourcing solution for the MA IAW DoDD 3025.18.
- Title 32 Training
  - The transport of disaster relief supplies, donated by private citizens, by NG airlift on Title 32 training orders could raise questions related to the appropriate use of Government resources and the extent to which NG’s airlift of private donations may compete with local commercial enterprise.
  - Questions related to the endorsement of non-Federal entities could also arise if the donations were associated to an identifiable private, non-governmental, or corporate group.
  - Consult JA before deciding to proceed in Title 32 Training status.

Key Reference:

- a) DoDD 3025.18, *Defense Support of Civil Authorities*, 29 December 2010 Incorporating Change 2, 9 March 2018

## IP – Use of a MEDEVAC Aircraft

### INFORMATION PAPER

SUBJECT: USE OF MEDEVAC AIRCRAFT

PURPOSE: Provide guidance concerning the use of MEDEVAC aircraft for a non-MEDEVAC mission during domestic civil unrest.

#### KEY POINTS:

- IAW AR 95-1, para. 3-3n(4), ARNG aircraft marked with the Red Cross insignia (MEDEVAC aircraft) will be used solely as dedicated evacuation platforms in support of the fundamental MEDEVAC mission. Request for ETPs are processed through ACOM, ASCC, DRU, or ARNG to the Deputy Chief of Staff, G-3/5/7 (DAMO-AV).
- IAW AR 40-3, para. 16-5g, Air ambulances will clearly mark all aeromedical evacuation aircraft on the nose, lower, upper, and lateral surfaces according to TM 55-1500-345-23. Red Cross markings will not be removed, painted over, or obscured.
- Helicopters marked with the Red Cross emblem should not be used for the purpose of dispersing crowds. Particular care should be taken, and even the appearance that helicopters marked with the Red Cross emblem are being used in this way should be avoided if at all possible.
- In general, the Red Cross emblem may not be used except to indicate or protect the medical units and establishments, personnel, and material protected by the 1949 Geneva Conventions. See DoD Law of War Manual § 7.15.4 (June 2015, Updated Dec. 2016) (“With the exception of certain cases mentioned in Article 44 of the GWS [First Geneva Convention of 1949] (discussed below), the emblem of the Red Cross on a white ground and the words “Red Cross” or “Geneva Cross” may not be employed, either in time of peace or in time of war, except to indicate or to protect the medical units and establishments, the personnel, and material protected by the GWS and other Conventions dealing with similar matters (*e.g.*, the GWS-Sea.)”) (citing Article 44 of the Geneva

Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of August 12, 1949). The DoD Law of War Manual (June 2015, Updated July 2023) is available at: <https://ogc.osd.mil/Law-of-War/Treaty-Documents/>.

- Medical personnel and vehicles generally must be exclusively engaged in humanitarian duties in order to receive protections under the 1949 Geneva Conventions. *See also* DoD Law of War Manual § 7.14.2 (June 2015, Updated July 2023) (“In order to receive protection as medical aircraft, the aircraft must be exclusively employed for the removal of wounded, sick, or shipwrecked combatants and for the transport of medical personnel and equipment. For example, such aircraft, while designated or operating as medical aircraft, may not be used also for military purposes, such as to transport able-bodied combatants or to carry ammunition to combat forces.”).
- The Red Cross emblem on a helicopter should only be used to indicate that the helicopter is carrying the wounded or sick, medical equipment, or medical personnel who are protected under the law of war. Further, a helicopter, while bearing the Red Cross emblem, should be exclusively employed for medical or other humanitarian purposes.

Key References:

- a) AR 95-1, *Flight Regulations*, 22 March 2018
- b) AR 40-3, *Medical Dental, and Veterinary Care*, 23 April 2013
- c) DoD Law of War Manual § 7.15.4, June 2015, Updated Dec. 2016

IP – IAA and Counterdrug Personnel

**INFORMATION PAPER**

SUBJECT: IAA AND COUNTERDRUG PERSONNEL

PURPOSE: To provide guidance on counterdrug personnel operating counterdrug platforms during IAA missions under IRA.

KEYPOINTS: CD personnel may operate CD platforms in conducting missions under IRA authority. The IRA missions must be valid and Domestic Imagery Legal Reviews or Proper Use Memorandums must be approved in advance of any IAA missions. CD personnel currently in 32 U.S.C. § 502(f) status conduct operational CD missions pursuant to 32 U.S.C. § 112 authority IAW approved CD State Plans. If a State wants to use these CD crews and platforms to provide IAA during disaster response, a State may do so under the following COAs:

COA 1. CD crews can fly IAA as part of immediate response authority:

Generally, the IRA mission authorization is decided by the State NG leadership. IRA requests and notifications route from the State J3/G3/A3 to the NGB JOC/ J3/4/7. Further, in response to a request for assistance from a civil authority, under imminently serious conditions and if time does not permit approval from higher authority, DoD officials may provide an immediate response by temporarily employing the resources under their control, subject to any supplemental direction provided by higher headquarters, to save lives, prevent human suffering, or mitigate great property damage within the United States. CD personnel may be tasked with operating CD platforms when supporting valid missions under IRA authority.

COA 2. For non-IRA support/non-CD support situations, CNGBI 1302.01 states "Members performing duty under the authority of 32 U.S.C. § 502(f) will not perform duties that are not specific requirements of the mission for which the members were ordered to duty. If circumstances require a change of duty, Commanders must amend/curtail the current order. A member whose tour was amended/curtailed removing the member from duty under 32 U.S.C. § 502(f) authority for a specific mission requires a new order to return to the original mission."

COA 3. Even though CD members are already on OS orders with their primary purpose being CD operational support, they are authorized to perform training while on CD orders, which may then provide incidental operational benefits. This training may be pursuant to drill or AT, in which they are legally required to perform while on CD orders. Therefore, they may be able to perform IAA support pursuant to their drill/ AT requirements, or, alternatively, if there is a "training opportunity" in which they may be able to increase their METL skills (Aviation, AV support), there may be discretionary authority (State CD leadership, TAG, State Aviation officer) to perform IAA pursuant to primary METL training ISO an IAA support request. In this case, if AT it must have been already scheduled and coincidentally aligned temporally with the IAA

mission support requested incidental to it; CD crews cannot be placed in otherwise unscheduled drill/AT for this purpose.

COA 4. Another theory, perhaps more attenuated, is by analogy to the AGR non-interference rules: CD members may perform OS on a limited basis where the performance of that OS does not interfere with their primary duties of performing CD operations. Of course, this is a slippery slope and must be managed accordingly. The spirit of this should be on an occasional basis, not on a regular basis, and be approved by the state and the CD program. Note a critical caveat for this COA: there would be a significant O&M cost associated with it and it is unclear how that could be funded.

COA 5. CD crews can provide IAA if incidental operational benefit associated with primary purpose of CD operational missions being flown, if there are actually CD missions being flown in that area during that time when IAA is requested and could be incidentally provided.

COA 6. States can break CD crew orders and place CD members on SAD in order to fly the IAA pursuant to EMAC, however, this may have adverse impact to the crews in terms of service-member pay & benefits. This is closely associated with COA 2 above.

#### Key References:

- a) DoDD 3025.18, *Defense Support of Civil Authorities*, 29 December 2010  
Incorporating Change 2, 19 March 2018
- b) CNGBI 1302.01, *Guidance for Members Performing Duty Under the Authority of 32 USC 502(f)*, 23 April 2017 Certified as Current 12 July 2017
- c) CNBGI 7500.00, *Domestic Use of National Guard Unmanned Aircraft Systems*, 13 October 2016

## IP – NG Support to USNORTHCOM

### INFORMATION PAPER

SUBJECT: NATIONAL GUARD SUPPORT TO USNORTHCOM

PURPOSE: To identify statutory and DoD policy authorities allowing certain NG personnel in a 10 U.S.C. § 12301(d) duty status to provide direct support to USNORTHCOM in furtherance of USNORTHCOM operations and missions.

KEY POINTS: 10 U.S.C. § 12301(d) duty status permits NG personnel on AC-funded ADOS orders to provide direct support to USNORTHCOM and perform any USNORTHCOM mission; NG personnel on ADOS-RC orders could perform certain RC missions, such as the NGB functions listed in 10 U.S.C. § 10503, that may relate to USNORTHCOM operations or missions.

#### **Statutory Authorities.**

a. 10 U.S.C. § 12301(d) provides the primary statutory authority to issue active duty orders for AGR and ADOS personnel. Whether serving AGR or ADOS under 10 U.S.C. § 12301(d), the consent of the individual and the respective governor (or Adjutant General) is required.

b. For AGRs, authorized duties are set out in 10 U.S.C. §§ 101 and 12310. In addition to AGR's primary function of "organizing, administering, recruiting, instructing, or training the reserve components," as articulated in 10 U.S.C. §§ 101(d)(6)(A) and 12310(a)(1), 10 U.S.C. § 12310(b) provides that AGRs may also:

perform the following additional duties to the extent that the performance of those duties does not interfere with the performance of the Reserve's primary Active Guard and Reserve duties described in subsection (a)(1):

(1) Supporting operations or missions assigned in whole or in part to the reserve components.

(2) Supporting operations or missions performed or to be performed by-

(A) a unit composed of elements from more than one component of the same armed force; or

(B) a joint forces unit that includes-

(i) one or more reserve component units; or

(ii) a member of a reserve component whose reserve component assignment is in a position in an element of the joint forces unit.

c. For ADOS personnel on active duty other than for training under 10 U.S.C. § 12301(d), authorized duties are set forth in 10 U.S.C. § 12314, which provides:



Reserves: kinds of duty. Notwithstanding any other provision of law, a member of a reserve component who is on active duty other than for training may, under regulations prescribed by the Secretary concerned, be detailed or assigned to any duty authorized by law for members of the regular component of the armed force concerned.

#### 4. Policy Authorities.

a. The primary DoD policy reference is DoDI 1215.06, Uniform Reserve, Training, and Retirement Categories for the Reserve Components (c2, 12 July 2022), which lays out the several RC duty categories for Title 10 personnel.

b. DoDI 1215.06 reiterates the AGR statutory limitations with respect to authorized AGR duties:

NG or Reserve Service members of the Selected Reserve serving on AGR duty assigned or attached to Selected Reserve units (to include full-time National Guard duty), as defined in [10 U.S.C. § 101], for the purposes of organizing, administering, recruiting, instructing, or training the RCs, who may also perform other duties in [10 U.S.C. § 12310].”

Because USNORTHCOM is both a joint and multi-component organization, it follows that a Title 10 AGR assigned or detailed to USNORTHCOM could support USNORTHCOM operations or missions pursuant to the authority of 10 U.S.C. § 12310(b)(2) and DoDI 1215.06, encl. 5, para. 2a(1)(b)1.

c. DoDI 1215.06 describes the two relevant types of ADOS, ADOS-AC and ADOS-RC: “ADOS tours are funded through applicable military or Reserve personnel appropriations (ADOS-AC-funded or ADOS-RC funded) to support AC or RC programs, respectively.” Similarly, Service-specific policies for ADOS-AC and ADOS-RC essentially state that ADOS personnel on AC-funded orders must perform AC missions, and ADOS personnel on RC-funded orders must perform RC missions (for ADOS-RC, see AR 135-200, Active Duty for Missions, Projects, and Training for Reserve Component Soldiers (26 Sep 17), and ANGI 36-2001, Management of Training and Operational Support Within the Air National Guard (30 Apr 19); for ADOS-AC, see AR 135-210, Order to Active Duty as Individuals for Other Than a Presidential Selected Reserve Call-up, Partial or Full Mobilization (17 Sep 19), and AFI 36-2619, Active Duty Operational Support (ADOS) Active Component (AC) Man-Day Program (25 Nov 19).

d. Based on 10 U.S.C. § 12314 and the foregoing Service-specific ADOS-AC policies, NG personnel on AC-funded ADOS orders could provide direct support to USNORTHCOM and perform any USNORTHCOM mission.

e. Direct support to USNORTHCOM in furtherance of USNORTHCOM operations and missions by NG personnel on RC-funded ADOS orders would be prohibited because such orders are only authorized to support RC missions. That said, NG personnel on ADOS-RC orders could perform certain RC missions, such as the NGB functions listed in 10 U.S.C. § 10503, that may relate to USNORTHCOM operations or missions.

f. To the extent that USNORTHCOM personnel are subject to the DoD Defense Support of Civil Authorities (DSCA) rules prescribed in DoDD 3025.18, Defense Support of Civil Authorities (DSCA) (c2, 19 Mar 18), those NG personnel providing direct support to

USNORTHCOM in a 10 U.S.C. § 12301(d) duty status would also be subject to those same rules.

**5. Personnel/Equipment. “Hip Pocket Activation”**

a. “Pursuant to 10 U.S.C. § 12301(d), 1st Air Force developed a process to instantaneously “Federalize” ANG members who, upon the occurrence of a specified event, are called upon to perform NORAD missions. This process automatically converts consenting ANG members into Title 10 upon the occurrence of a “triggering” event, known by 1st AF as an “air sovereignty event.” On 11 June 2003, authority “to order into Federal service . . . those members of the Air National Guard who have volunteered to perform Federal active service in furtherance of the Federal mission” was delegated to the Chief of Staff of the Air Force, who has the authority to re-delegate this authority to a MAJCOM Commander who can also re-delegate his authority. This “hip pocket” process is now used for other Air Force missions but not authorized for ARNG missions. ARNG missions such as Ground-based Mid-course Defense (GMD) convert Title 32 AGR members to Title 10 upon arrival at the duty location for that day’s duty and revert to Title 32 status when released from that duty by their commander.”

b. USNORTHCOM has authority to utilize 10 U.S.C. § 12301(d) for what is called “Hip-Pocket” activation of ANG units to support NORAD missions. This is a voluntary activation and requires the consent to the applicable state Governors, i.e. consent from the individual member and the respective Governor. This authority has been granted to the respective Service Secretaries. By a series of delegations, the Commander of both 1 AF (AFNORTH) and the Continental United States NORAD Region (CONR) received the authority to recall Air NG members pursuant to § 12301(d).

**Key References:**

- a) 10 U.S.C. § 12301(d)
- b) 10 U.S.C. § 10503
- c) 10 U.S.C. § 101
- d) DoDI 1215.06, Uniform Reserve, Training, and Retirement Categories for the Reserve Components, 11 March 2014, Incorporating change 2 12 July 2022
- e) AR 135-200, Active Duty for Missions, Projects, and Training for Reserve Component Soldiers, 26 September 2017
- f) ANGI 36-2001, Management of Training and Operational Support Within the Air National Guard, 30 April 19
- g) AR 135-210, Order to Active Duty as Individuals for Other Than a Presidential Selected Reserve Call-up, Partial or Full Mobilization, 17 September 19
  - a. AFI 36-2619, Active Duty Operational Support (ADOS) Active Component (AC) Man-Day Program, 25 November 2019

IP – National Guard Weapon Authorities

**INFORMATION PAPER**

SUBJECT: NATIONAL GUARD WEAPON AUTHORITIES

PURPOSE: This information paper provides a brief overview of applicable federal and state law, as well as Department of Defense (DoD) and Army regulations, that permit Army National Guard personnel to possess, transport, and use military weapons in the off-post performance of official military duties.

KEY POINTS:

Guidance

Policy for the carrying and use of firearms by DoD personnel is prescribed in DoDD 5210.56, *Arming and the Use of Force*. DoD personnel may be armed on and off DoD property while executing official duties. Those duties may extend across States, Territories, and foreign nations. Agreements and procedures for notification and coordination should be implemented with non-DoD entities.

State law regarding use of force applies to National Guard personnel when in title 32 duty status, and state laws regarding use of force are not uniform. In title 32 duty status, the governors have “operational control” over National Guard personnel, while the United States government provides funding. The United States government can exercise control over the arming and use of force rules through funding mechanisms.

1. *Federal Law*. 10 U.S.C. § 1585 provides:

Carrying of firearms. Under regulations to be prescribed by the Secretary of Defense, civilian officers and employees of the Department of Defense may carry firearms or other appropriate weapons while assigned investigative duties or such other duties as the Secretary may prescribe.

2. *DoD Firearms Policy*. Policy for the carrying and use of firearms by DoD personnel is prescribed in DoDD 5210.56, *Arming and the Use of Force* (18 November 2016/C1 6 November 2020). In relevant part, DoDD 5210.56 provides the following policy guidance:

a. Para. 1.2(a) “When authorized, DoD personnel may be armed on and off DoD property when required for the performance of official duties.”

b. Para. 1.2(b) “Arming DoD personnel other than law enforcement and security personnel will be considered for locations where law enforcement or security personnel are not located on site or in a reasonable proximity...”

c. Para. 1.2(c) “Authorizing the carrying of firearms and the use of force in the performance of official duties will be implemented in accordance with Section 3 of this issuance, DoDI 5200.08, and applicable federal law. Additionally, DoD personnel in locations outside the United States and who are authorized to carry firearms must comply with applicable host-nation laws and international agreements.

d. Para. 2.4. “DOD Component heads will...

(a) Prescribe supplemental guidance and training materials for their respective components...<sup>44</sup>

(b) Apply the following considerations when authorizing the arming of assigned DoD personnel for the performance of official duties:

(1) To the extent practical, DoD Component heads will prioritize such authorization for DoD personnel (including but not limited to security, law enforcement, and counterintelligence personnel) who have had training in scaled use of force or who have qualified to use the firearm with which they will perform their duties.

(2) Other considerations in arming decisions will include assigned missions, threats or risks, response times of law enforcement or security personnel, on-site capabilities, and the duty to protect DoD assets and persons.

(3) The authorization may include, as necessary, the carrying and retention of a government-issued firearm off DoD property for the performance of official duties.

(4) Whether the Lautenberg Amendment (Section 922(g)(9) of Title 18, U.S.C.) or DoDI 6400.06 restricts the arming of individual DoD personnel.

(c) Direct assigned DoD personnel armed with government-issued firearms for the performance of official duties to use secure storage (e.g., safety-lock device, security box, or

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<sup>44</sup> Because the National Guard Bureau is defined as a DoD Component in DoDD 5105.77, para. 2.1., the Chief, National Guard Bureau, may accordingly serve as the “Head of a DoD Component” to carry out the authorities prescribed in DoDD 5210.56.

other approved security container or device). Provide secure storage containers or devices and instructions on its proper use.

(d) Direct assigned DoD personnel who are specifically authorized to carry a privately owned firearm for the performance of official duties to use secure storage (e.g., a safety-lock device, security box, or other approved security container or device).

(e) Establish mutual notification procedures between the installation or facility host and tenant organizations' leadership and security personnel concerning arming authorizations, permissions, and suspensions that may result in or affect an individual's ability to carry, transport, or use of a firearm on DoD property.

(f) Establish agreements and procedures for notification and coordination with State and local law enforcement when arming personnel for the performance of official duties at off-installation locations.

(g) Establish agreements and procedures for tenants to notify and coordinate with designated officials and facility security committees at leased facilities for a risk assessment prior to arming DoD personnel for the performance of official duties at the leased location.

(h) Establish and maintain accountability (e.g., file copies of authorization and permission documentation) of DoD personnel who have been authorized or permitted to carry firearms pursuant to this issuance.

(i) Post signage, written notices, and procedures in all DoD facilities where government firearms or ammunition are stored, issued, disposed of, or transported in accordance with regulations.

(j) Suspend arming authorizations for DoD personnel who are no longer qualified to be armed.

(k) Train DoD personnel on the use of force and responsibilities associated with carrying a firearm for the performance of official duties in accordance with this issuance and applicable law.

(l) Designate arming authorities for DoD personnel other than those assigned to DCIO, counterintelligence, law enforcement, or security duties.

(m) Establish rank, grade, or position requirements for personnel designated as arming authorities for those organizations performing DCIO, counterintelligence, law enforcement, or security duties, or who carry a firearm for duty on a routine basis.

(n) Establish rank, grade, or position requirements for personnel who will be designated as the official that may permit the concealed or open carry of privately owned firearms on DoD property for personal protection purposes that are not related to the performance of official duty or duty status.

f. Para 3.1(a)(1). Pursuant to DoDI 5200.08, military commanders and their civilian equivalents may issue the necessary regulations for the protection and security of property and places under their command or supervision. Tenants on an installation governed by another DoD Component policy may authorize arming for their assigned personnel in accordance with DoDI 5200.08 and this issuance.

3. *Army Firearms Policy*.<sup>45</sup> Army policy implementing DoDD 5210.56 is prescribed in AR 190-14, *Carrying of Firearms and Use of Force for Law Enforcement and Security Duties* (12 March 1993). It should be noted, however, that the regulation's applicability statement states that it applies to "the Army National Guard only when called or ordered to active duty in a Federal status under the provisions of title 10, United States Code." To the extent that AR 190-14 permits certain officers to authorize Army National Guard personnel to carry and use firearms, this authority is limited to authorizing officials and Army National Guard personnel who are serving in a title 10 status. In relevant part, AR 190-14 provides the following policy guidance for the carrying and use of firearms.

a. Para. 1-5a. "The authorization to carry firearms will be issued only to qualified personnel when there is a reasonable expectation that life or Department of the Army (DA) assets will be jeopardized if firearms are not carried. Evaluation of the necessity to carry a firearm will be made considering this expectation weighed against the possible consequences of accidental or indiscriminate use of firearms."

b. Para. 2.1a. "Officers of field grade rank or higher, or civilian equivalent of grade General Schedule (GS)-12 or above may authorize the carrying of firearms for law enforcement and security duties described in paragraph 2.2."

c. Para. 2.2b. "Authorization to carry a firearm includes the authority to permit or require the firearm to be loaded. Unless otherwise specified by local policy, authority to carry a loaded firearm will be implied by issuance of ammunition with the firearm."

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<sup>45</sup> Corresponding Air Force firearms policy is found in AFI 31-117, *Arming and Use of Force by Air Force Personnel* (22 April 2019). In contrast to AR 190-14, AFI 31-207 applies to Air National Guard personnel regardless of their service in a title 10 or title 32 duty status.

d. Para. 2.2c. “Authorization to carry firearms may be granted to personnel authorized to . . . [p]rotect the President of the United States, high ranking Government officials, DoD personnel, or foreign dignitaries [as well as] DoD assets and personnel.”

e. Para. 2-3b. “Except in situations requiring immediate action to protect life or vital Government assets, all authorizations to carry firearms by personnel will be, in writing, signed by the appropriate authorizing official . . .”

f. Para. 2-4. Written authorization will be provided using the DA Form 2818, Firearms Authorization. “DA military and civilian personnel regularly assigned to law enforcement or security duties may be given a continuing authorization (not to exceed 1 year) to carry firearms, provided they pass and maintain eligibility and qualification standards.”

g. Para. 2-6a. “Weapons may be carried off an installation by DA personnel engaged in official duties when authorized by officers of field grade rank or higher, or civilian equivalent of grade GS-12 or above.”

h. Para. 2-9a. “An individual authorized to safeguard a firearm is responsible for ensuring proper safeguards to prevent loss, theft, or unauthorized use.

i. Para. 2-9b. Firearms storage and accountability will otherwise follow procedures prescribed in AR 190-11, *Physical Security of Arms, Ammunition, and Explosives* (15 November 2006).

4. *Army National Guard Firearms Policy.* The National Guard Bureau (NGB) has not issued a regulation implementing the authority of DoDD 5210.56 and AR 190-14. Accordingly, there is no NGB-specific policy guidance that addresses the carrying and use of firearms by Army National Guard personnel.

5. *Arming National Guard Personnel in a Title 32 Duty Status.* In title 32 duty status, the governors have “operational control” over National Guard personnel, while the United States government provides funding. State law regarding the use of force applies to National Guard personnel when in a title 32 duty status, and state laws regarding the use of force are not uniform. Virginia and the District of Columbia provide two examples of state and district laws that permit National Guard personnel to possess and transport military weapons in the performance of their official duties. Ultimately, the United States government (e.g. the President, DoD) can exercise control over the arming and use of force rules through funding, e.g., the requirement to adopt particular arming and use of force rules as a funding condition.

a. As one example, Virginia Code Annotated § 18.2-293 provides that the limitations on possession and transportation of automatic weapons does not apply to: “Machine guns and automatic arms issued to the national guard of Virginia by the United States or such arms used by the United States army or navy or in the hands of troops of the national guards of other states

or territories of the United States passing through Virginia . . .” Virginia Code Annotated § 18.2-303 similarly exempts National Guard personnel from restrictions on the possessions or transport of certain shotguns and rifles. *See also* Va. Code. Ann. §§ 18.2-308 (concealed weapons); 18.2-308.2 (firearms possession by convicted felons).

b. The D.C. Official Code § 22-4505 exempts the following military personnel from the District’s weapons-possession limitations:

Members of the Army, Navy, Air Force, or Marine Corps of the United States, or of the National Guard or Organized Reserves when on duty and duly authorized to carry a firearm.

*See also* D.C. Stat. §§ 7-2502.01 (exemption from weapons registration requirements); 22-4514 (exemption from restrictions on possession of machine guns, sawed-off shotguns, knuckles, switchblade knives, and certain other dangerous weapons).

#### Key References:

- a) 10 U.S.C. § 1585
- b) Va. Code. Ann. §§ 18.2-308, *Concealed weapons*
- c) D.C. Official Code § 22-4505
- d) D.C. Stat. §§ 7-2502.01, *Exemption from weapons registration requirements*
- e) D.C. Stat. §§ 22-4514, *Exemption from restrictions on possession of machine guns, sawed-off shotguns, knuckles, switchblade knives, and certain other dangerous weapons*
- f) DoDI 6400.06, *Office of the Under Secretary of Defense for Personnel and Readiness*, 15 December 2021, Change Effective 16 May 2023
- g) DoDI 5200.08, *Security of DoD Installations and Resources and the DoD Physical Security Review Board (PSRP)*, 10 December 2005, Incorporating Change 3, Effective 20 November 2015
- h) DoDD 5210.56, *Arming and the Use of Force*, 18 November 2016, Incorporating Change 16 November 2020
- i) AR 190-14, *Carrying of Firearms and Use of Force for Law Enforcement and Security Duties*, 12 March 1993
- j) AR 190-11, *Physical Security of Arms, Ammunition, and Explosives*, 15 November 2006



## Abbreviations & Acronyms

ABS	Adaptive Battle Staff
AC	Active Component
AD	Active Duty
ADA	Anti-Deficiency Act
ADOS	Active Duty for Operational Support
ADT	Active Duty Training
AF	Air Force
AFARS	Army FAR Supplement
AFCYBER	U.S. Air Force Cyber Command
AFFARS	Air Force FAR Supplement
AFNORTH	Air Forces Northern [USNORTHCOM Air Component]
AFPT	Additional Flying and Flight Training Period
AFSC	Air Force Specialty Code
AFI	Air Force Instruction
AFSFHM	Air Force Single Flying Hour Model (program)
AG	Adjutant General
AGR	Active Guard and Reserve
AHSP	All Hazards Support Plan
ANG	Air National Guard
ANGI	Air National Guard Instruction
ANGUS	Air National Guard of the United States
AOR	Area of Responsibility
AR	Army Regulation

ARCYBER	U.S. Army Cyber Command
ARNG	Army National Guard
ARNG-AV	Army National Guard Aviation
ARNG-TRI	Army National Guard Individual Training Branch
ARNGUS	Army National Guard of the United States
ARNORTH	Army Northern [USNORTHCOM Army Component]
ASA(M&RA)	Assistant Secretary of the Army for Manpower & Reserve Affairs
ASD	Assistant Secretary of Defense
ASD-HD/ASA	ASD of Homeland Defense & Americas' Security Affairs
ASD(PA)	Assistant Secretary of Defense for Public Affairs
ASP	Ammunition Supply Point
ASPR	DoD Assistant Secretary for Preparedness and Response
AT	Annual Training
ATP	Additional Training Period
ATF	Bureau of Alcohol, Tobacco, Firearms, and Explosives
AWS	Alternative Work Schedule
BOP	Bureau of Prisons
C2	Command and Control
C2CRE	Command and Control CBRN Element
CBA	Collective Bargaining Agreement
CBO	Community-Based Organization
CBRNE	Chemical, Biological, Radiological, Nuclear, & high yield Explosive
CCMF	Cyber Combat Mission Force
CICA	Competition in Contracting Act
CISA	Cybersecurity and Infrastructure Security Agency

CD	Counterdrug
CDC	Counterdrug Coordinator
CDC	Centers for Disease Control
CDR	Commander
CEG	Chief's Executive Group
CERFP	CBRNE Enhanced Response Force Package
CFAA	Computer Fraud and Abuse Act
CFR	Code of Federal Regulations
CG	Commanding General
CHATS	CI/ Human Intelligence Automated Tool Set
CHIMSCI/	Human Intelligence Information Management System
CI	Counterintelligence
CI/KR	Critical Infrastructure/ Key Resources
CIO	Chief Information Officer
CJCS	Chairman, Joint Chiefs of Staff
CLEO	Civil Law Enforcement Operations
CMF	DoD Cyber Mission Force
CMT	Combat Mission Team
CNGB	Chief, National Guard Bureau
CNGBI	Chief, National Guard Bureau Instruction
CNGBM	Chief, National Guard Bureau Manual
CNMF	Cyber National Mission Force
CNMI	Commonwealth of the Northern Mariana Islands
CO	Cyberspace Operations
COA	Course of Action

COCOM	Combatant Command
CONR	Continental NORAD Region
CONUS	Continental United States
COOP	Continuity Of Operations Program
CPF	Cyber Protection Force
CPT	Cyber Protection Team
CRE	CBRN Response Enterprise
CRS	Congressional Research Service
CSSP	Cybersecurity Service Provider
CST	Combat Support Team
CTAA	Coordinate, Train, Advise, and Assist
CUOP	Current Operations
DA	Department of the Army
DAF	Department of the Air Force
DALO-TSP	DA Logistics Office, Transportation Management Division
DANG	Director, Air National Guard
DARNG	Director, Army National Guard
DCNG	District of Columbia National Guard
DCO	Defensive Cyberspace Operations
DCO-E	Defensive Cyberspace Operations - Elements
DCO-IDM	Defensive Cyberspace Operations-Internal Defensive Measures
DCO-RA	Defensive Cyberspace Operations-Response Actions
DCRF	Defense CBRN Response Force
DEPSEC	Deputy Secretary [of Defense]
DFARS	Defense FAR Supplement

DHA	Defense Health Agency
DHA-PM	Defense Health Agency Procedures Manual
DHS	Department of Homeland Security
DIA	Defense Intelligence Agency
DLR	Depot-Level Repairs
DOD	Department of Defense
DODD	Department of Defense Directive
DODI	Department of Defense Instruction
DODIN	Department of Defense Information Network
DODM	Department of Defense Manual
DOE	Department of Energy
DOI	Department of Interior
DOJ	Department of Justice
DOMOPS	Domestic Operations
DPH	Director of Psychology Health
DRM	Disaster Recovery Manager
DSC	Dual Status Commander
DSCA	Domestic Support of Civil Authorities
DSCIR	Defense Support to Cyber Incident Response
DSG	Drill Status Guardsman (also called “M-Day”)
DTM	Defense Technical Manual
EBDL	Electronic Based Distance Learning
EEOC	Equal Employment Opportunity Commission
ECPA	Electronic Communications Privacy Act
EMA	Emergency Management Authority

EMAC	Emergency Management Assistance Compact
EMT	Emergency Medical Technician
EOD	Explosive Ordnance Disposal
EOS	Emergency Management Assistance Compact Operating System
EMS	Emergency Medical Services
ESF	Emergency Support Function
EOC	Emergency Operations Center
EPA	Environmental Protection Agency
ETP	Exception to Policy
EXORD	Execute Order
FAA	Federal Aviation Administration
FAR	Federal Acquisition Regulation
FCO	Federal Coordinating Officer
FDA	Food and Drug Administration
F&ES	Fire and Emergency Services
FEMA	Federal Emergency Management Agency
FHWG	Flying Hour Work Group
FI	Foreign Intelligence
FM&C	Financial Management and Comptroller
FMS	Foreign Military Sales
FOC	Future Operations Center
FOIA	Freedom of Information Act
FP	Force Protection
FPC	Future Plans Center
FOIA	Freedom of Information Act

FTCA	Federal Tort Claims Act
FTNGD	Full-time National Guard Duty
FTNGD-CD	Full-time National Guard Duty-Counterdrug
FTNGD-OS	Full-time National Guard Duty-Operational Support
FW	Fighter Wing
FWS	Flexible Work Schedule
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GKO	Guard Knowledge Online
GMD	Ground-based Mid-course Defense
GO	General Officer
GSA	General Services Administration
GU	Guam
GUNG	Guam National Guard
HAZMAT	Hazardous Materials
HCP	Healthcare Providers
HD	Homeland Defense
HHS	U.S. Department of Health and Human Services
HIPAA	Health Insurance Portability and Affordability Act
HQDA	Headquarters, Department of the Army
HRC	Human Resources Command
HRF	Homeland Response Force
HHQ	Higher Headquarters
HQ	Headquarters
HUMINT	Human Intelligence

IAA	Incident Awareness and Assessment
IAW	In Accordance With
IC	Intelligence Community
ICS	Incident Command System
ICTB	Inter-facility Credentials Transfer Brief
IDT	Inactive Duty Training
IEMAMOU	International Emergency Management Assistance MOU
IEMG	International Emergency Management Group
IG	Inspector General
IMR	Individual Medical Readiness
INFO OPS	Information Operations
INIWIC	Interservice Nonlethal Individual Weapons Instructors Course
IP	Information Paper
IP	Internet Protocol
IO	Intelligence Oversight
IRA	Immediate Response Authority
IRT	Innovative Readiness Training
ISO	In Support Of
ISP	Internet Service Provider
ISR	Intelligence, Surveillance and Reconnaissance
IT	Information Technology
JA	Judge Advocate
JAO	JA International and Operational Law Branch (USAF)
JCCQAS	Joint Centralized Credentialing Quality Assurance System
JCS	Joint Chiefs of Staff



JDOMS	Joint Directorate of Military Support
JFHQ	Joint Forces Headquarters
JFO	Joint Field Office
JIEE	Joint Information Exchange Environment
JLT	Joint Liaison Team
JOC	Joint Operations Center
JROTC	Junior Reserve Officer Training Corps
JTF	Joint Task Force
JTF-CS	Joint Task Force Civil Support
JWICS	Joint Worldwide Intelligence Communications System
LE	Law Enforcement
LEA	Law Enforcement Agency
LOD	Line of Duty
MA	Mission Assignment
MAC	Multiagency Coordination [Groups]
MAFFS	Modular Airborne Fire Fighting System
MAJCOM	Major Command
M-DAY	Man-Day (also called “drilling period”)
MDEP	Management Decision Package
MEJA	Military Extraterritorial Jurisdiction Act
METL	Mission Essential Task List
METS	Mission Essential Tasks
MFR	Memorandum For Record
MHCP	Military Health Care Professional
MHS	Military Health System

MIA	Missing in Action
MILAIR	Military Air
MIP	Military Intelligence Program
MPA	Military Personnel Appropriation
MOA	Memorandum of Agreement
MOS	Military Occupational Specialty (Army)
MOU	Memorandum of Understanding
MRD	Mandatory Retirement Date
MSPB	Merit Systems Protection Board
MTF	Military Treatment Facility
NAF	Non-Appropriated Funds
NCCIC	National Cybersecurity and Communications Integration Center
NCIRP	National Cyber Incident Response Plan
NCOER	Non-Commissioned Officer Evaluation Report
NEMA	National Emergency Management Association
NEMAC	Northern Emergency Management Assistance Compact
NG	National Guard
NGA	National Geospatial-Intelligence Agency
NGAP	National Guard Assistant Program
NGB	National Guard Bureau
NGB-IGO	National Guard Bureau, Office of the Inspector General
NGB-GC	Office of the General Counsel, National Guard Bureau
NGB-LL	National Guard Bureau, Legislative Liaison
NGB-PA	National Guard Bureau, Public Affairs
NGCC	National Guard Coordination Center

NGO	Non-Governmental Organization
NG PAM	National Guard Pamphlet
NGR	National Guard Regulation
NICC	National Interagency Coordination Center
NIFC	National Interagency Fire Center
NIMS	National Incident Management System
NIP	National Intelligence Program
NM	Nautical Mile
NMT	National Mission Team
NORAD	North American Aerospace Defense Command
NPS	National Preparedness System
NRF	National Response Framework
NSC	National Security Council
NSPM	National Security Presidential Memorandum
NSSE	National Special Security Event
NST	National Support Team
NTV	Non-Tactical Vehicle
OCLL	DoD Office of the Chief of Legislative Liaison
OCO	Offensive Cyberspace Operations
OCONUS	Outside the Contiguous United States
O&M	Operations and Maintenance
OPJAGAF	Opinion of the Judge Advocate General of the U.S. Air Force
OPLOAD	Operational Loads
ORR	Office of Response and Recovery (FEMA)
OS	Operational Support

OSA	Operational Support Airlift
OSAA	Operational Support Airlift Agency
OSD	Office of the Secretary of Defense
OSD-GC	OSD, General Counsel
PA	Privacy Act
PAO	Public Affairs Officer
PCA	Posse Comitatus Act (see 18 U.S.C. § 1385)
PD	Position Description
PHE	Public Health Emergency
PHEO	Public Health Emergency Officer
PHSA	Public Health Service Act
PII	Personally Identifiable Information
PM	Policy Memorandum [Department of Defense]
PM	Procedures Manual [Defense Health Agency]
PNEMA	Pacific Northwest Emergency Management Arrangement
POC	Point of Contact
POL	Petroleum, Oil and Lubricants
POTUS	President of the United States
POW	Prisoner of War
PPD	Presidential Policy Directive
PPE	Personal Protective Equipment
PPOM	Personnel Policy Operational Memorandum
PUM	Proper Use Memorandum
QIA	Questionable Intelligence Activity
QRF	Quick Reaction Force

RC	Reserve Component
RFA	Request for Assistance
RFI	Request for Information
REQ-A	Request for Assistance
RMP	Readiness Management Period
ROTC	Reserve Officers Training Corps
RUF	Rules for the Use of Force
SAAO	State Army Aviation Officer
SAR	Search and Rescue
SAD	State Active Duty
SAF	Secretary of the Air Force
SAF/PA	Secretary of the Air Force, Public Affairs
SDF	State Defense Force
SEAR	Special Event Assessment Rating
SECAF	Secretary of the Air Force
SECAR	Secretary of the Army
SECDEF	Secretary of Defense
SIPRANET	Secret Internet Protocol Router Network
SJA	Staff Judge Advocate (or State Judge Advocate)
SLTT	State, Local, Tribal, Territorial
SLTPS	State, Local, Tribal, Private Sector Entities
SM	Service Member
SOF	Special Operations Forces
SOFA	Status of Forces Agreement
SOP	Standard Operating Procedures

SRT	Special Reaction Team
SSA	Shared Situational Awareness
SWB	Southwest Border
sUAS	Small Unmanned Aircraft System
TACC	Tanker Airlift Control Center
TAG	The Adjutant General
TA4C	Total Army Ammunition Authorization and Allocation Committee
TAMIS	Total Ammunition Management Information System
TDY	Temporary Duty Status
TPR	Technician Personnel Regulation
TTPs	Tactics, Techniques, and Procedures
TWCF	Transportation Working Capital Fund
UAS	Unmanned Aircraft System
USACE	U.S. Army Corps of Engineers
USAF	United States Air Force
USAR	United States Army Reserve
USCYBERCOM	United States Cyber Command
USDA	United States Department of Agriculture
USD(I)	Under Secretary of Defense for Intelligence
USFS	United States Forest Service
USINDOPACOM	United States Indo-Pacific Command
USG	United States Government
USMC	United States Marine Corps
USMS	United States Marshal Service
USN	United States Navy

USNORTHCOM	United States Northern Command
USPFO	United States Property and Fiscal Officer
USPI	United States Persons Information
WMD	Weapons of Mass Destruction
WMD-CST	WMD-Civil Support Teams

