

DOMESTIC DISASTER RESPONSE 2017 HURRICANES HARVEY, IRMA, AND MARIA

LESSONS LEARNED FOR JUDGE ADVOCATES



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HURRICANES HARVEY, IRMA, AND MARIA**

FORWARD



NATIONAL GUARD BUREAU
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30 April 2018

MEMORANDUM FOR DEPARTMENT OF DEFENSE AND NATIONAL GUARD
JUDGE ADVOCATES, CIVILIAN ATTORNEYS, AND
SUPPORT STAFF

Subject: Domestic Disaster Response 2017, Lessons Learned for Judge
Advocates

1. This Domestic Disaster Response 2017 publication represents the joint work of personnel from multiple organizations, both within and outside of the Department of Defense. It is an invaluable resource for domestic operations presenting important, consolidated, and relevant information that is vital to ensure efficient and rapid response.
2. For nearly two decades, I witnessed the ever improving response effort to almost every major domestic disaster, emergency, and significant operation inside the United States and its possessions. A few things stand out: First, disaster Response is a highly complex effort requiring superb coordination among participants. Second, the best government response requires judge advocates, civilian attorneys, and support staff to communicate, coordinate, and collaborate before, during, and after an operation. Finally, regardless of your knowledge or familiarity with Domestic Operations, we must strive to learn more and perpetually improve our response efforts. Ultimately, this publication will help to save lives, prevent human suffering, and mitigate property damage.
3. Thank you to those who made this compendium possible. This single product brings together the key concepts that practitioners must know. A special thank you to those who have or will provide legal counsel and support for a domestic operation. Your counsel and future input is essential for continued mission success.

A handwritten signature in black ink, appearing to read "Chris Roerano", is written over a horizontal line.

CHRISTIAN A. ROERANO
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Chief Counsel, National Guard Bureau

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PREFACE

The purpose of this publication produced by the Center for Law and Military Operations (CLAMO) is to timely provide active and reserve component judge advocates with lessons learned and other material that they may refer to during a disaster response. The desired end-state is increased readiness. Material for this publication was gathered from active and reserve component judge advocates and other agency attorneys who participated in the relief operations that took place nationally and internationally for Hurricanes Harvey, Irma, and Maria from August through October of 2017. The active component commands and activities include the National Guard Bureau (NGB), ARNORTH, NORTHCOM, SOUTHCOM, USAREC, as well as U.S. Coast Guard Districts 7 and 8. This work would not be possible without the several States and territories that supported the hurricane responses and provided feedback to CLAMO. Lastly, this publication also incorporates relevant comments made during more than fifty hours of interviews, hundreds of hardcopy or electronic documents provided, and E-mails forwarded by over sixty contributors listed in the acknowledgments section. This publication would not have been possible without the contribution of all concerned.

As you navigate this publication, you will be presented with multiple practice tips and other useful pieces of information that will enable you to provide timely and accurate advice to commanders, or effectively train service-members during a disaster response. There are also multiple appendices. These appendices were carefully created or chosen to either provide you with a more in-depth understanding of a particular area of law or policy, or give you quick-references and templates that will not only save time, but will also point you in the right direction. The appropriate appendices and their relevance will be referred to throughout this publication. Note that Appendix A captures additional observations and tips worthy of mentioning that may not be covered in-depth in the other sections.

While this publication largely covers the laws, policies, and best practices that govern domestic responses during major disaster or emergencies, Section K will also address foreign disaster relief as there were some DoD personnel who responded to the international damage caused by Hurricanes Irma and Maria. Different rules apply when dealing with international versus domestic disaster responses. For instance, the multiple statuses of the National Guard under State and Federal law only come into play domestically. Also, many fiscal authorities are different, and, as will be discussed further in this publication, unlike international operations, the rules of engagement (ROE) do not apply domestically. These differences have been taken into account, and CLAMO has completed an after action report (AAR) addressing the DoD international response to the 2017 hurricanes. You may review the AAR by [clicking here](#). Additional information on foreign humanitarian assistance can be found in Chapter 18 of the Operational Law Handbook (17th Edition). [Click here](#) for the Operational Law Handbook (CAC required).

The observations and comments reported in this publication are those of the legal personnel who deployed with designated units. The issues, discussions, and conclusions presented in this publication do not necessarily represent the views of CLAMO, the JAG Corps,

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the respective Geographic Combatant Commander (GCC), the National Guard Bureau (NGB), or the units/commands interviewed.

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A. INTRODUCTION

There are five key elements that characterize the 2017 hurricanes. First, the warm Pacific system that was expected for 2017 never formed. The result was a much lower wind shear that could break apart early forming Atlantic storms. Second, Atlantic temperatures were higher than normal which led to rapid intensification of storms. Third, the 2017 hurricanes occurred without a break in-between. Harvey overlapped with Irma. Irma overlapped with Jose. Jose overlapped with Maria. Fourth, for the first time since 2007, two hurricanes made landfall at Category 5 intensity. Hurricane Irma was the strongest storm ever recorded in the Atlantic Basin. Lastly, from the Caribbean Islands to the southernmost portions of Florida, Hurricanes Irma and Maria hit locations difficult to evacuate and access.

The destruction caused by Hurricanes Harvey, Irma, and Maria was horrific. In late August 2017, Hurricane Harvey left Texas and Louisiana with approximately \$200B in damage, roughly 30,000 citizens displaced, and 17,000 rescues performed. In early September 2017, Hurricane Irma left the U.S. Virgin Islands, Puerto Rico, and Florida with approximately \$65B in damage, five million citizens evacuated, and over five million citizens without power. Hurricane Irma also struck the Caribbean Leeward Islands of Barbuda, St. Maarten, and the British Virgin Islands. After Irma, unfortunately the torment was not over for Puerto Rico and the U.S. Virgin Islands. In late September, Hurricane Maria added to the damage caused by Hurricane Irma by causing billions of dollars in additional damage, increased power outages, and at least 45 deaths.

The response to all three hurricanes from the State and local governments, the Federal government, and our civilian partners was nothing short of phenomenal. The FY17 hurricane response involved 43 States and resulted in the activation of more than 50,000 members of the National Guard. The Coast Guard resolved over 1,269 aids to navigation discrepancies, handled 290 pollution cases, and located and assessed more than 3,623 grounded vessels, with more than 1,585 removed to date. SOUTHCOM as part of the concurrent Foreign Humanitarian Assistance mission, was specifically authorized to provide urgent lifesaving transportation assistance, logistics, engineering, air traffic control support, and intelligence, surveillance, and reconnaissance throughout the Caribbean when requested by affected host nation governments and tasked through the United States Agency for International Development. The Special Purpose Marine Air-Ground Task Force SOUTHCOM was designated as the Joint Task Force Leeward Islands and was given the Foreign Disaster Assistance mission. The Air Force provided personnel and aircraft to carry equipment, supplies, and people needed for the mission.

Additionally, legal professionals from across the globe served at a moment's notice. Over 60 judge advocates and Federal civilian attorneys served during the disaster response. These judge advocates and civilian attorneys were from multiple entities including but not limited to the National Guard Bureau, the State National Guards, the U.S. Navy, U.S. Marine Corps, U.S. Coast Guard, ARNORTH, NORTHCOM, SOUTHCOM, FEMA, and U.S. Army Reserve Command. While we cannot predict the date of the next major disaster, we can ensure our readiness when the date arrives.

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B. DISASTER RESPONSE OPERATIONS AND THEIR CONTEXT

B.1—How It All Works: The Act, Plan, and Systems

The Stafford Act, 42 U.S.C. §§ 5121-5207, was passed in 1988 and made effective in May of 1989. It was passed subsequent to specific findings and declarations of Congress. More specifically, Section 101 of the Act states, “The Congress hereby finds and declares that (1) because disasters often cause loss of life, human suffering, loss of income, and property loss and damage; and (2) because disasters often disrupt the normal functioning of governments and communities, and adversely affect individuals and families with great severity; special measures, designed to assist the efforts of the affected States in expediting the rendering of aid, assistance, and emergency services, and the reconstruction and rehabilitation of devastated areas, are necessary.” By passing the Act, Congress intended, “to provide an orderly and continuous 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.”

The lead Federal agency for the Stafford Act is the Federal Emergency Management Agency (FEMA). Before FEMA takes action under the Stafford Act, the President of the United States (POTUS) must make one of two declarations, 1) a major disaster declaration, or 2) an emergency declaration. Under the Act, a major disaster is defined 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.” An emergency is defined 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.”

A declaration by POTUS, which is normally in response to a Governor’s Request For Assistance, enables FEMA to take action under the Stafford Act. Major disaster declarations trigger long-term Federal recovery programs. Some of these programs are matched by State programs and designed to help disaster victims, businesses, and public entities. Emergency declarations are more limited in scope and without the long-term Federal recovery programs. Stafford Act funding also becomes available. Stafford Act funding is not available for a Governor’s declaration of emergency. With that said, DoD support under Immediate Response Authority will not be delayed or denied based on the inability or unwillingness of the civil authority to make a commitment to reimburse the DoD.

Before the President may declare a declaration, a couple actions must occur. First, FEMA and State representatives complete a Preliminary Damage Assessment. “The preliminary damage assessment documents the impact of the event, estimates initial damage, establishes a

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foundation for the governor to request assistance, and provides background for FEMA's analysis of the request.” (DSCA Handbook, GTA90-01-020, para. 3.9.1) Second, the Governor requests assistance. The Governor’s request must state that “the Governor has taken appropriate action and directed execution of the State Emergency Operations Plan, certify that the incident is of such severity and magnitude that [S]tate and local resources are inadequate, include a damage estimate, describe the [S]tate and local resources committed to response and recovery, and describe the requested assistance and agree to cost-sharing provisions.” (DSCA Handbook, GTA90-01-020, para. 3.9.1)

Third, “FEMA reviews the request and makes a recommendation.” (DSCA Handbook, GTA90-01-020, para. 3.9.1) In this phase of the process, the Governor’s request is addressed to the President through the FEMA Regional Administrator. (DSCA Handbook, GTA90-01-020, para. 3.9.1) The FEMA Regional Office completes analysis of request and issues a recommendation to FEMA Headquarters. (DSCA Handbook, GTA90-01-020, para. 3.9.1) FEMA Headquarters reviews the Governor’s request to ensure that it is compliant with the Stafford Act requirements listed above. (DSCA Handbook, GTA90-01-020, para. 3.9.1) Then, the FEMA Administrator recommends a course of action to the President. (DSCA Handbook, GTA90-01-020, para. 3.9.1) The last step in the Presidential disaster declaration process is taken when, if warranted, the President makes a Major Disaster or Emergency Declaration. (DSCA Handbook, GTA90-01-020, para. 3.9.1) If a declaration is issued, then assistance is made available under the Stafford Act, and a Federal Coordinating Officer (FCO) is designated to oversee disaster operations. (DSCA Handbook, GTA90-01-020, para. 3.9.1) FEMA coordinates the Federal response to a disaster and issues mission assignments to other Federal agencies. A mission assignment is a work order issued by FEMA Operations to a Federal agency directing completion of a specific task, and citing funding, other managerial controls, and guidance. A mission assignment is only issued during the Emergency Response Phase of a DSCA operation and involves only non-permanent work. Also, a mission assignment is generally issued and obligated in order to make resources available to address estimated, immediate mission-critical needs and is frequently updated. As the need for a particular mission assigned activity is assessed, mission assignment funding may be supplemented or de-obligated as required. Distinguished, a mission assignment task order is generally used to provide specifics for a broad statement of work (e.g., delivery sites for water). Mission assignment task orders prevent the issuance of multiple mission assignments for the same statement of work. A mission assignment task order will be prepared to direct specific activities within the scope of a mission assignment. Mission assignment task orders may include personnel, resource movement, and locations for delivery and duty stations. Lastly, mission assignment task orders are the tactical equivalent of the FRAGO where follow on orders/instructions are issued from an original base order (previously existing document that directs an overall action).

Also note that once a Stafford Declaration has been made, T-10 Reserve Components may be ordered to duty under 10 U.S.C. § 12304. When a Governor requests Federal assistance in response to a major disaster or emergency, the Secretary of Defense 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

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request. Even though the Stafford Act and the statute authorizing the recall of the reserves during a national emergency were in place, September 11, 2011 proved that they were not enough.

In February 2003, President Bush issued Homeland Security Presidential Directive 5, “Management of Domestic Incidents,” “to enhance the ability of the United States to manage domestic incidents by establishing a single, comprehensive national incident management system.” Homeland Security Presidential Directive 5 directed the Secretary of Homeland Security to develop the “National Incident Management System.” The National Incident Management System “provide[s] a consistent nationwide approach for Federal, State, and local governments to work effectively and efficiently together to prepare for, respond to, and recover from domestic incidents, regardless of cause, size, or complexity. “To provide for interoperability and compatibility among Federal, State, and local capabilities, the NIMS . . . include[s] a core set of concepts, principles, terminology, and technologies covering the incident command system; multi-agency coordination systems; unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources.” (Appendices C and D)

A key element of the National Incident Management System is the Incident Command System. The Incident Command System is “[a] standardized on-scene emergency management construct specifically designed to provide for the adoption of an integrated organizational structure that reflects the complexity and demands of single or multiple incidents, without being hindered by jurisdictional boundaries. The Incident Command System is the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure, designed to aid in the management of resources during incidents. It is used for all kinds of emergencies and is applicable to small as well as large and complex incidents. The Incident Command System is used by various jurisdictions and functional agencies, both public and private, to organize field-level incident management operations.” (IS-0100.b, Incident Command System Instructor Guide, p 19) The Incident Commander and Incident Command are part of the Incident Command System. The Incident Commander is “[t]he individual responsible for all incident activities, including the development of strategies and tactics and the ordering and the release of resources. The Incident Commander has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site.” (IS-0100.b, Incident Command System Instructor Guide, p 18) The Incident Command is, “[t]he Incident Command System organizational element responsible for overall management of the incident and consisting of the Incident Commander (either single or unified command structure) and any assigned supporting staff.” Unified Command is one of the key ICS concepts. Unified Command is, “[a]n Incident Command System application used when more than one agency has incident jurisdiction or when incidents cross political jurisdictions. Agencies work together through the designated members of the Unified Command, often the senior persons from agencies and/or disciplines participating in the UC, to establish a common set of objectives and strategies and a single Incident Action Plan.” (IS-0100.b, Incident Command System Instructor Guide, p 25)

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In addition to directing the development of the National Incident Management System, Homeland Security Presidential Directive 5 also directed the Secretary of Homeland Security to develop and administer the National Response Plan. The National Response Plan “. . . integrate[d] Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan The National Response Plan, using the National Incident Management System, . . . with regard to response to domestic incidents, provide[d] the structure and mechanisms for national level policy and operational direction for Federal support to State and local incident managers and for exercising direct Federal authorities and responsibilities, as appropriate.”

The National Response Framework superseded the National Response Plan. The National Response Framework builds upon the National Incident Management System coordinating structures to align key roles and responsibilities across the Nation, linking all levels of government, non-governmental organizations (NGOs), and the private sector. The National Response Framework provides specific guidance on how the Nation conducts all-hazards responses. The National Response Framework is designed to ensure that local jurisdictions retain command and control authority over response activities within their jurisdictional areas. The National Response Framework contains “response doctrine.” (National Response Framework, https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf, last accessed April 13, 2018) “Response doctrine defines the basic roles, responsibilities, and operational concepts for response across all levels of government and with [non-governmental organizations] NGOs and the private sector.” (Course: IS-800.B - National Response Framework, An Introduction, https://emilms.fema.gov/IS800B/lesson1/is800b_Print.htm, last accessed April 13, 2018)

The five key principles of the response doctrine are “(1) engaged partnership, (2) tiered response, (3) scalable, flexible, and adaptable operational capabilities, (4) unity of effort through unified command, and (5) readiness to act.” (The National Response Framework at 5, https://www.fema.gov/media-library-data/1466014682982-9bcf8245ba4c60c120aa915abe74e15d/National_Response_Framework3rd.pdf, last accessed April 13, 2018) Tiered response means that “incidents must be managed at the lowest possible jurisdictional level and supported by additional capabilities when needed.” (*Id.*) When a major disaster occurs, the local government in the affected area has the responsibility as first responders. Once the local government becomes overwhelmed, then they may call upon the State for support. Once the State engages, the Governor may decide to place the State’s National Guard on State Active Duty orders to support the response effort. When State Active Duty orders are implemented, the Governor acts as the commander-in-chief of the State’s National Guard and the State pays for all expenses. At this juncture, if the State’s resources are overwhelmed, the Governor may call upon resources from other States pursuant to the Emergency Management Assistance Compact, Public Law 104-321. Each State and territory has ratified the Emergency Management Assistance Compact. (Appendix E for more information) Once the Governor has declared a state of emergency and other procedural requirements under the Stafford Act have been met, the Governor may submit a request for Federal assistance. The

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aforementioned is the essence of a tiered response under the National Response Framework. Once Federal assistance is approved, each Federal department leads or supports an Emergency Support Function.

Emergency Support Functions are part of the specific guidance found within the National Response Framework. The fourteen (14) Emergency Support Functions are “used by the Federal Government and many State governments as the primary mechanism at the operational level to organize and provide assistance. Emergency Support Functions align categories of resources and provide strategic objectives for their use. Emergency Support Functions utilize standardized resource management concepts such as typing, inventorying, and tracking to facilitate the dispatch, deployment, and recovery of resources before, during, and after an incident.” (the FEMA Instructor Guide to the National Response Framework p 25) Emergency Support Functions #5, Emergency Management, is the primary Emergency Support Functions when dealing with major disasters such as floods, typhoons, and hurricanes is Emergency Support Functions # 5. Emergency Support Functions annexes “present the missions, policies, structures, and responsibilities of Federal agencies for coordinating resource and programmatic support to States, tribes, and other Federal agencies or other jurisdictions and entities when activated to provide coordinated Federal support during an incident.” (the FEMA Instructor Guide to the National Response Framework, p. 25)

Homeland Security Presidential Directive-8, “National Preparedness,” established policies to strengthen U.S. preparedness to prevent and respond to threats and actual domestic terrorist attacks, major disasters, and other emergencies by requiring a national domestic all-hazards preparedness goal, establishing mechanisms for improved delivery of Federal preparedness assistance to State and local governments, and outlining actions to strengthen the preparedness capabilities of Federal, State, and local entities. Homeland Security Presidential Directive-8 Annex I, “National Planning,” formally establishes a standard and comprehensive approach to national planning. It is meant to provide guidance for conducting planning in accordance with the Homeland Security Management System in the National Strategy for Homeland Security of 2007. Planning is one of the eight national priorities listed in the National Preparedness Guidelines and it is a target capability across all homeland security mission areas.

B.2—The System In Action

Once the incident occurs locally, the trigger provision of support is the Request For Assistance. There are three instances when a Request for Assistance may arise. First, a State or local civil authority may submit a Request For Assistance to a local commander (active or reserve component). The request may be written or oral and later followed by a writing. [DoD Directive (DoDD) 3025.18 para 4.d, “All requests for DSCA shall be written, and shall include a commitment to reimburse the Department of Defense in accordance with . . . the Stafford Act, . . . the Economy Act, or other authorities except requests for support for Immediate Response, and mutual or automatic aid”] Second, a Federal agency may request assistance from another Federal agency. Here, the Request For Assistance must be in writing. Third, the Governor of an affected State may submit a Request For Federal Assistance to the President of the United States.

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Who qualifies as a “civil authority?” A civil authority is a person elected or appointed to a position within the governments of the United States (U.S.), 50 states, District of Columbia, Puerto Rico, U.S. Virgin Islands, Guam, other U.S. territories and possessions, or any political subdivision thereof. What does “imminently serious conditions” mean? Based on the judgment of the military commander or DoD component head using the information available to them at the time, imminently serious conditions arise when a civil authority requests assistance to save lives, prevent human suffering, or mitigate great property damage and time does not permit approval from a higher authority within the United States. For the Federal military, the “higher authority” is the Secretary of Defense (SecDef). For the National Guard, the “higher authority” is the State’s Adjutant General. (Appendix C) Who qualifies as a “commander?” A commander is a commissioned or warrant officer who, by virtue of rank, assignment, and pursuant to official orders, exercises primary command authority over a military organization or prescribed territorial area, which under official regulation is recognized as a command. What about reimbursement? Should reimbursement be requested? Unless a statutory exception applies, military commanders and or DoD officials must request reimbursement from the civil authority who requests and receives assistance.

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 or the National Guard. If National Guard personnel are responding in their State Active Duty status in support of a State agency, then the State is already paying the bill. Thus, the only reimbursement necessary is for usage of Federally procured equipment and or supplies, which should be worked through the State’s United States Property and Fiscal Officer. It is important to note that the inability or unwillingness of the civil authority to commit to reimbursement is not reason enough to refuse to provide assistance at the local level under Immediate Response Authority. If a commander within DoD is providing assistance under Immediate Response Authority, should the commander also provide a unit account number where the civil authority may directly pay funds? No. Federal personnel receiving reimbursements from non-Federal civil authorities “shall deposit the money in the Treasury as soon as practicable without deduction for any charge or claim.” [31 U.S.C. § 3302(b), “the Miscellaneous Receipts Statute,” and 31 U.S.C. § 9701, “Fees and Charges for Government Services and Things of Value”] Reimbursement from Federal entities is made to the DoD organization providing the support in accordance with the Economy Act.

When exercising Immediate Response Authority, what are the reporting requirements? There must be immediate notification to the National Joint Operations and Intelligence Center and, for the National Guard serving in an authorized T-32 status, to the National Guard Coordination Center (NGCC). (DoDD 3025.18 and CNGBI 1302.01) At a minimum, the notification should include the following information: (1) civil authority requesting the support and the time the request was received; (2) type of support requested; (3) description of the incident; (4) number, by type, of assets or installation support provided; (5) status of personnel (military, civilian, or contractor); (6) duration of support; and (7) cost of the support.

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In the second instance, a Federal agency may request assistance from another Federal agency. Here, the Request for Assistance must be in writing. Third, the Governor of an affected State may submit a Request for Assistance for Federal assistance. When the Governor of an affected State submits a Request for Assistance for Federal assistance, the Governor does not submit the Request for Assistance direct to the POTUS. Rather, the Request For Assistance process begins with FEMA, as representative for the Federal government, and State representatives completing a Preliminary Damage Assessment. The Preliminary Damage Assessment documents the impact of the event and estimates initial damage. The Preliminary Damage Assessment also establishes a foundation for the State's Governor to request assistance. Last, the Preliminary Damage Assessment provides background for FEMA's analysis of the request. Once the Preliminary Damage Assessment is complete, the State's Governor submits a written Request for Assistance that 1) states that the Governor has taken appropriate action and directed execution of the State Emergency Operations Plan, 2) certifies that the incident is of such severity and magnitude that State and local resources are overwhelmed, 3) includes a damage estimate, 4) describes the State and local resources committed to response and recovery, and 5) describes the assistance requested and cost-sharing provisions.

Next, FEMA reviews the request and makes a recommendation. For the Request For Assistance to enter the FEMA review process, the Governor's request must be addressed to the POTUS through the FEMA Regional Administrator. The FEMA Regional Office completes analysis of the Request For Assistance and issues a recommendation. Next, the FEMA Headquarters reviews the Request For Assistance to ensure compliance with the Stafford Act requirements. Once complete, the FEMA Administrator recommends a course of action to the POTUS. After the FEMA review process is complete, the POTUS decides whether to issue a major disaster or emergency declaration. If the POTUS issues a declaration, then Federal assistance is made available under the Stafford Act, and a Federal Coordinating Officer is appointed. The FCO is a senior FEMA official who manages and coordinates Federal resource support activities related to Stafford Act disasters and emergencies. The POTUS appoints a Federal Coordinating Officer after a recommendation by the FEMA Administrator and the Secretary of Homeland Security. The Federal Coordinating Officer executes Stafford Act authorities, including committing FEMA resources and giving mission assignments to other Federal departments and agencies. The Federal Coordinating Officer also plays a significant role in managing the financial aspects of DSCA.

On March 19, 2018, DoDD 3025.18, Defense Support of Civil Authorities, was updated. In addition to many important changes, the update removes the term "civil support" from the definition of DSCA. Judge Advocates should be aware that the National Guard provides civil support to civil authorities regularly and that, in most cases, the civil support provided by the NG is not governed by the DSCA policy. Thus, the civil support provided by members of the NG while in their State Active Duty status or regular drill/annual training status under Title 32 (T-32) § 502(a) statuses should not be confused with defense support within the context of DoDD 3025.18. However, there are two exceptions. First, DSCA applies to members of the National Guard when "under Federal command and control [T-10 status]." (DoDD 3025.18, para 2.b) DSCA also applies to members of the National Guard "when the Secretary of Defense

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determines that it is appropriate to employ National Guard personnel in T-32 status to fulfill a request for DSCA.” (DoDD 3025.18, para 2.b) “The Secretary of Defense requests the concurrence of the Governors of the affected States, and those Governors concur in the employment of National Guard personnel in such status.” (DoDD 3025.18, para 2.b) When this narrow exception under T-32 is exercised, even though the DSCA policy applies to members of the National Guard, the Posse Comitatus Act does not. When serving in their T-32 status, command and control of the National Guard remains with the State while funding is provided by the Federal government. In contrast, the Posse Comitatus Act applies to the National Guard when serving in their T-10 status. In this instance, funding for and command and control of members of the National Guard transfers to the Federal government.

If the DoD has a mission to perform law enforcement within a State, then the activities must be performed in strict compliance with The Posse Comitatus Act, Chapter 18 of Title 10 of the United States Code (Crimes and Criminal Procedure), section 1970 of title 2 of the United States Code (Assistance by Executive Departments and Agencies to the United States Capitol Police), DoD Instruction (DoDI) 3025.21 (Defense Support of Civilian Law Enforcement Agencies), and other Federal laws, including those protecting the civil rights and civil liberties of individuals, as applicable. While the PCA applies to the Army, Navy, Air Force, and Marine Corps (and their respective T-10 reserves), it never applies to the Coast Guard, even when placed under DoD command. The Coast Guard’s law enforcement authority is not limited to the water and may be exercised ashore under certain conditions. (Appendix K)

C. EVACUATION

C.1—Necessary Conditions

Issue: What conditions must be met for the designated official to order an evacuation? What is the triggering event?

Authority(ies): Joint Travel Regulation, Chapter 6 (Evacuations); 37 U.S.C. 475a (Travel and Transportation Allowances: Departure Allowances); 5 U.S.C. 5725 (Transportation Expenses: Employees Assigned to Dangerous Areas); DoDD 3025.14 (Evacuation of U.S. Citizens and Designated Aliens from Threatened Areas Abroad)

Discussion: Many U.S. Army Recruiting Command battalions did not know that the hurricanes would affect their area until a few days before the hurricanes made landfall. One of the primary issues that arose was when the evacuation order should be issued and what event triggered the issuance. One battalion employed its S-4 Weather and Safety Specialist to retrieve historical data from previous major disasters similar in nature and brief the command team on the threat. This information enabled credible recommendations about possible decision points.

A major concern was that critical resources such as fuel and necessary supplies, as well as modes of transportation, would be limited when the civilian population attempted to evacuate thus impeding their departure. Under paragraph 0601 of the Joint Travel Regulation, “The authority to evacuate an area depends on whether it is in the CONUS, a non-foreign location

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OCONUS, or a foreign location.” Table 6-2 indicates that, for DoD components including service-members dependents, civilian employees, and civilian employee dependents, either the Secretary of Defense (or his or her designee), the Secretary of the service concerned, the Head of the Component (or his or her designee), the Commander of the Installation or the Coast Guard District Commander, or the Commander, head, chief, or supervisor of the organization or office may order or authorize an evacuation within their area of authority. For foreign locations, “[t]he DoS decides when the United States evacuates personnel from a foreign location.” [Joint Travel Location, Chapter 6, para 060101(D)] “A Service-member is placed on a temporary duty (TDY) order or permanent change of station (PCS) order rather than placed in an evacuation status when required to leave a permanent duty station (PDS).” (Joint Travel Location, Chapter 6, para 060102)

An evacuation may be ordered from an area “threatened by unusual or emergency Circumstances.” (Joint Travel Location, Chapter 6, Introduction Paragraph) For the U.S. Army Recruiting Command, the affected battalions conducted after action reviews and recommended that the military evacuation authority should not wait until the civil authorities issue an analogous evacuation determination. The act of not waiting serves to mitigate the risk of scarce resources upon actual evacuation. (Appendix F)

Conclusion: According to Chapter 6 of the Joint Travel Regulation, certain named Government personnel have the authority to order an evacuation. Timing is based on the totality of the circumstances at the time the decision is made.

C.2—Safe Haven Factors

Issue: What factors should a commander consider when identifying a safe haven?

Authority(ies): Joint Travel Regulation, Chapter 6 (Evacuations); 37 U.S.C. 475a (Travel and Transportation Allowances: Departure Allowances); 5 U.S.C. 5725 (Transportation Expenses: Employees Assigned to Dangerous Areas); DoDD 3025.14 (Evacuation of U.S. Citizens and Designated Aliens from Threatened Areas Abroad)

Discussion: The commander who orders the evacuation is also authorized to designate the safe haven for evacuees. A safe haven is a temporary location to which a dependent is sent during an evacuation and service-members are sent on temporary duty orders. The designation of a safe haven serves several purposes, to include personnel accountability, property availability, the ability of the brigade/battalion to dedicate its resources to maximize impact to the largest number of affected persons, etc. Although dependents are not required to evacuate to the designated safe haven, reimbursement of travel expenses may be limited to those costs that would have been incurred to travel to the safe haven. (Appendix F)

For example, the establishment of a single safe haven for persons who evacuated Puerto Rico during Hurricane Maria allowed the U.S. Army Recruiting Command battalion to surge capability to the safe haven to provide assistance and conduct a needs assessment of recruiters

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and their dependents. Identifying a safe haven near a military installation was helpful to ensure the evacuees had access to medical and legal support. Additionally, the Education Services Specialist reached out to school districts in the safe haven and garnered their support to allow children to enroll in school and bypass many of the standard requirements.

The command learned that it was very difficult to designate one location as the safe haven because of limited resources such as hotel rooms. Room availability became an issue because the major disaster was predicted to cover a vast geographical area thereby causing the evacuation of a large number of civilians. Such an evacuation led to an increased demand for a limited number of hotel rooms. For natural disasters affecting a large number of civilians, it is recommended that safe havens be designated in several metropolitan areas.

Conclusion: Some of the factors that a commander should consider when identifying safe havens are property/room availability, proximity to the hurricane, ability to account for military personnel, and the ability of the command to assist the evacuees.

C.3—Allowances

Issue: Once an evacuation is ordered, are service-member dependents authorized rental cars for local transportation at the safe haven?

Authority(ies): Joint Travel Regulation, Chapter 6 (Evacuations); 37 U.S.C. 475a (Travel and Transportation Allowances: Departure Allowances); 5 U.S.C. 5725 (Transportation Expenses: Employees Assigned to Dangerous Areas); DoDD 3025.14 (Evacuation of U.S. Citizens and Designated Aliens from Threatened Areas Abroad)

Discussion: First, to receive allowances during an ordered evacuation, a service-member's dependents must meet the criteria outlined in Section 0602 of the JTR. Also, service-members are placed on TDY or PCS orders when required to evacuate their duty location. A civilian employee can be evacuated, placed on a TDY order, or reassigned to a new permanent duty station. The JTR provides no authority for support to contractors during an evacuation. (JTR, para 060102) A service-member's dependents may be eligible for evacuation allowances. Those allowances are computed based upon the duration of stay at the safe haven, as detailed in Section 060205 of the JTR. However, the service-member's dependents are not authorized rentals cars for local transportation at the safe haven. Instead, a local travel allowance of \$25 per day for each family is authorized if the dependent did not transport a personally owned vehicle to the safe haven. (Appendix F)

Conclusion: Table 6-16, Transportation Allowances for a Dependent during Evacuation, of the JTR addresses the issue of rental cars for dependents. Further, it is important for the servicing OSJA to disseminate guidance that identifies persons eligible for assistance during the evacuation and the type of assistance available. If the OSJA is unable to issue such guidance prior to evacuation, then coordination should be made with the OSJA nearest the safe haven to ensure that all service-members and evacuees understand their eligibility and entitlements. Coordination should include National Guard judge advocates.

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D. REQUEST FOR ASSISTANCE (RFA)

D.1—Immediate Response Authority (Federal Commanders)

Issue: May a Federal military commander exercise Immediate Response Authority without a Request For Assistance from a civil authority?

Authority(ies): DoDD 3025.18 (Defense Support of Civil Authorities); DoDM 3025.01, Vol. 2 (Defense Support of Civil Authorities: Incident Response)

Discussion: During Hurricane Harvey, Marine Forces Reserve units entered the JOA without mission assignments associated with their capabilities. The Special Purpose Marine Air-Ground Task Force also brought several units to support its operational force that could not be used for mission assignments. In this case, no such request existed and this created a need to “pull” that force, or a portion of it, under a mission assignment, to provide an authority for their employment, coverage for their liability under the Federal Tort Claims Act, and at least some reimbursement for their deployment.

During the response to Hurricane Irma, there were many questions about the commander’s ability to use Immediate Response Authority to save lives and prevent human suffering. For example, the question was asked whether the captain of a ship could respond under Immediate Response Authority if it “came across” a distress call. There also seemed to be confusion about what required a Search and Rescue Mission Assignment from FEMA under emergent circumstances. For both, it depends on the specific circumstances. Generally, even without a Search and Rescue Mission Assignment, the Federal commanders, including Naval commanders, may take action if the requirements listed within DoDD 3025.18 are met. With that said, commanders must clearly understand Immediate Response Authority as listed in DoDD 3025.18 and DoDM 3025.01, Vol. 2, paragraph 5.4 which states, “Immediate [R]esponse [A]uthority does not authorize DoD officials to provide support without a request from a civil authority. Some other examples of DoD support that are not covered by [I]mmediate [R]esponse [A]uthority include: (1) Support provided in accordance with existing Memorandums of Agreement or Mutual Aid Agreements (e.g., local firefighting, ambulance response). See Section 4 of Volume 1 of this manual for additional information concerning interagency support agreements and Mutual Aid Agreements; (2) Support provided in accordance with a FEMA Mission Assignment; and (3) Support of civilian law enforcement activities.”

Conclusion: No. A Federal military commander may not exercise Immediate Response Authority without a Request For Assistance from a civil authority. Without a request from a civil authority or a mission assignment from FEMA, if Federal forces are pre-positioned outside of the anticipated area of operation, especially if those forces are pre-positioned in another State and not on a Federal military base, then the Federal forces may be performing outside their official capacities, which raises reimbursement and liability issues.

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Installation and unit commanders—across the DoD—must be instructed on the requirements and limitations of Immediate Response Authority. Systemic disregard of the requirement for a request from competent civil authority, resulting in units entering the joint operations area without an approved mission assignment creates unnecessary confusion that cuts against unity of effort. For those on the T10 staff for the Dual Status Commander, getting an accounting of Immediate Response Authority activity within the first seventy-two (72) hours is critical in assessing the mission assignments and submission of Request for Forces because it is likely these forces will be Category IV under the DSCA Execute Order requiring Secretary of Defense approval.

D.2—Immediate Response Authority (National Guard Commanders)

Issue: May members of the National Guard, already in a duty status, respond under a commander’s Immediate Response Authority?

Authority(ies): DoDD 3025.18 (Defense Support to Civil Authorities); 32 U.S.C. § 502(f); DepSecDef Memo, “Guidance for the Utilization of Immediate Response Authority for DSCA in Complex Catastrophes,” 9 December 2013; CNGBI 1302.01 (Guidance for Members Performing Duty Under the Authority of 32 U.S.C. § 502(f))

Discussion: 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, (most typically installation 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.

As the principle authority for and during State emergencies, the State Governor may direct a State Immediate Response using National Guard personnel under State command and control (including personnel in a T-32 status) in accordance with State law. However, National Guard personnel not already serving in a status, will not be placed in or extended in Title 32 status to conduct State Immediate Response activities. Therefore, if National Guard personnel were conducting Annual Training and the Immediate Response mission extends beyond the end date of the Annual Training orders, at the end date of the Annual Training order National Guard personnel must terminate T-32 orders. If the State desires the National Guard personnel to continue the Immediate Response activity, the State must place the National Guard personnel in a State Active Duty status.

It is National Guard Bureau policy that any Immediate Response be reported to National Guard Bureau as soon as possible. More specifically, Chief of the National Guard Bureau Instruction 1302.01, para. 4.e states that, “Commanders directing members in a 32 USC 502(f) duty status must immediately notify the National Guard Coordination Center.”

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An Immediate Response ends 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.

No later than 72-hours after the Immediate Response Authority was exercised, the commander must provide a reassessment to the Chief of the National Guard Bureau in order to continue the use of personnel in a T-32 status. This reassessment must find that continued support is needed to save lives, prevent human suffering, or mitigate great property damage. Chief of the National Guard Bureau must approve Immediate Response activities that last longer than 72-hrs.

All incremental costs involved with military personnel in Federal service responding in Immediate Response are reimbursable to the DoD. However, support will not be delayed or denied due to lack of commitment to reimburse.

In Immediate Response situations, maximum efforts must be made to replace Active Guard Reserves members, Full-time National Guard Duty-Operational Support/Full-time National Guard Duty-Civil Disturbance/Civil Support Team members, and technicians with traditional members in an appropriate duty status.

As to authorized missions, anything that entails saving lives, preventing human suffering, or mitigating great property damage, and does not violate the restrictions discussed below may be performed. Specific authorized missions may include transporting the injured, fighting fires, moving critical supplies, distributing food and water, moving rubble or debris (if circumstances qualified), etc. Each mission should be considered on a case-by-case basis.

Personnel must clearly understand the rule against the performance of law enforcement. DoDD 3025.18, paragraph 4.i states, "Immediate [R]esponse authority does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory." Thus, if the National Guard personnel are in their State Active Duty status versus their T-10 status, then those individuals may be assigned an LE support mission because they are not subject to DoD authority. (Appendix K)

Conclusion: Yes, members of the National Guard who are already in a duty status may respond under a commander's Immediate Response Authority. However, if the [I]mmediate [R]esponse extends beyond 72-hours, Chief of the National Guard Bureau authorization is required.

PRACTICE TIP: Even if the support provided by the National Guard was not pursuant to a commander's Immediate Response Authority, the National Guard may still provide civil support in their Federal training status. National Guard assets may be made available under current training plans if applicable under 32 U.S.C. § 502(a) or (f)(1). The Office of the Chief Counsel for the National Guard Bureau has advised that National Guard members should be in an operational duty status if (1) the mission involves reasonable likelihood of use of force against

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civilians, or (2) the security risk is so high that the service-members are armed for force protection.

Further, note that in 2010, the word “local” was intentionally removed from the definition of Immediate Response Authority in DoDD 3025.18. This action was taken to give commanders greater flexibility to use their [I]mmediate [R]esponse authority to assist civil authorities located beyond the immediate area of the installation. Further, JP 3-28 at pages II-5 and 6 states, “The distance from the incident to the DOD office or installation is not a limiting factor for the provision of support under Immediate Response Authority. However, DOD officials should use the distance and the travel time to provide support as a factor in determining DOD’s ability to support the request for Immediate Response. The scale of the event should also be a determining factor for whether or not to provide support to incidents that are several miles, possibly hundreds of miles, away from the installation under Immediate Response Authority. In some cases of catastrophic incidents, the demands for life-saving and life-sustaining capabilities may exceed both the State’s and the United States Government’s ability to mobilize sufficient resources to meet the demand. In these circumstances, installations and facilities that are not directly impacted should be prepared to provide Immediate Response support if they are able to save lives, prevent human suffering, or prevent great property damage.”

Lastly, the definition of DSCA also includes DoD contract personnel. (the glossary of DoDD 3025.18) Knowledge of this part of the definition may prove beneficial when determining whether contract personnel may provide support to civil authorities.

D.3—Immediate Response Authority (Naval Ship Commanders)

Issue: Do Commanders of U.S. Naval vessels have Immediate Response Authority?

Authority(ies): DoDD 3025.18 (DSCA); CJCS DSCA EXORD para. 3.I.7; Office of the Chief of Naval Operations Instruction 3440.16E; 14 U.S.C. § 141 (Cooperation with Other Agencies, States, Territories, and Political Subdivisions)

Discussion: When Navy ships began arriving in the Virgin Islands and Puerto Rico (USS Kearsarge/USS Oak Hill) and off the coast of Key West (USS Iwo Jima/USS New York), there was a question of whether DoD had the authority to conduct Search and Rescue missions without a FEMA Search and Rescue Mission Assignment. In addition to these broader categories, for example, a question came up regarding dropping water to located survivors until they could be picked up by helicopter and whether this would be considered “save lives and prevent human suffering.” A Mission Assignment from FEMA is always the best practice and ideally DoD would conduct all operations pursuant to an Mission Assignment. The Mission Assignment is also vital for recoupment of costs to DoD, and generally DoD will not be able to receive recoupment without a Mission Assignment. However sometimes urgent requirements and the general pace of DSCA operations do not allow for a Mission Assignment. During this period DoD relied upon two different authorities to conduct Search and Rescue—Immediate Response Authority and USCG § 141 authority.

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Immediate Response Authority can be a valuable tool in disaster response, but requirements do exist and JAGs should guard against Immediate Response Authority being stretched beyond its regulatory intention. In response to a request from a competent civil authority, under imminently serious conditions and if time does not permit approval from higher authority, DoD officials (most typically installation commanders) may provide an Immediate Response by temporarily employing the resources under their control to save lives, prevent human suffering, or mitigate great property damage within the US. However, Immediate Response Authority does not allow for actions that would subject civilians to the use of military power that is regulatory, prescriptive, or compulsory. Separately, any decision by a commander exercising Immediate Response Authority to temporarily deploy resources requires notification to the National Joint Operations and Intelligence Center. Moreover, commanders may not normally continue support under Immediate Response Authority beyond 72 hours. When using this authority DoD commanders shall reassess whether there remains a continued need for a DoD response as soon as practicable, but no later than 72 hours after the Request For Assistance was received. Lastly, if there has already been a disaster declaration by POTUS and a FEMA coordinating cell—then scrutinize the use of Immediate Response Authority heavily, as it is intended to be a short term measure filling the gap in FEMA coordination time (DoDD 3025.18, Chairman of the Joint Chiefs of Staff DSCA Execute Order para. 3.I.7; Office of the Chief of Naval Operations Instruction 3440.16E; TJAGLCS DOMOPS Handbook (2015 ed.), Ch. 2).

In addition to Immediate Response Authority, there is authority for DoD forces to conduct Search and Rescue under the standing USCG Search and Rescue mission, if they request DoD help. For Search and Rescue purposes, 14 USC § 88 grants the USCG broad jurisdiction to: (a) Render aid to distressed persons, vessels, and aircraft on and under the high seas and on and under the waters over which the US has jurisdiction; (b) Perform any and all acts necessary to rescue and aid persons and protect and save property; (c) Take charge of and protect all property saved from marine or aircraft disasters, or floods, at which USCG is present; and, (d) Furnish clothing, food, lodging, medicines, and other necessary supplies and services to persons succored by the USCG. They may also render aid to persons and protect and save property at any time and at any place at which USCG facilities and personnel are available and can be effectively utilized. 14 USC § 88 has no geographical limitations. As it relates to Navy tasking under USCG authority, 14 USC § 141 provides that the USCG may, with the consent of the head of the agency concerned, avail itself of such employees, advice, information, and facilities of any federal agency, State, territory, or political subdivision thereof, as may be helpful in the performance of its duties.

Conclusion: Yes. Commanders of U.S. Naval vessels have Immediate Response Authority.

D.4—Recall of the Reserve Component (Army Reserve)

Issue: May T-10 reservists be recalled to support the Federal response to domestic disasters? Are there additional restrictions for the National Guard?

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Authority(ies): 10 U.S.C. § 12302 (Army Reserve, Navy Reserve, Marine Corps Reserve, and Air Force Reserve: order to active duty to provide assistance in response to a major disaster or emergency); U.S. Army Reserve Command OPORD 18-046, Annex C, Appendix 3; DoDD 3025.18 (Defense Support of Civil Authorities); DoDI 1215.06 (Uniform Reserve, Training, and Retirement Categories for the Reserve Components); DoDI 1235.11 (Management of Individual Mobilization Augmentees); DoDI 3025.23 (Domestic Defense Liaison with Civil Authorities)

Discussion: Under 10 U.S.C. § 12302(a), when the President of the United States has declared a national emergency, “or when otherwise authorized by law, an authority designated by the Secretary concerned may, without the consent of the person concerned, order any unit, and any member not assigned to a unit organized to serve as a unit, in the Ready Reserve under the jurisdiction of that Secretary to active duty for not more than 24 consecutive months.” However, this recall authority should not be confused with a commander’s authority under Immediate Response Authority. To determine the appropriate pay status of Army Reservists, see U.S. Army Reserve Command OPORD 18-046 or the most current OPORD for Army Reserve all-hazards DSCA issued by U.S. Army Reserve Command .

Regardless of status, the 72-hour reassessment rule listed in DoDD 3025.18 applies. The rule requires that, once commanders have responded under their Immediate Response Authority and 72-hours have passed, they must report their status to higher command. Active component reports must be submitted to the Combatant Commander of the appropriate combatant command and the National Joint Operations and Intelligence Center. National Guard reports must be submitted to the Chief of the National Guard Bureau via the National Guard Communication Center. Note that the 72-hour reassessment does not mean that the assistance must halt. Instead, support provided to a commander’s Immediate Response Authority may continue beyond the 72-hour point so long as the commander assesses the situation and determines that “imminent serious conditions” remain and that the assistance is still required.

DoDI 1215.06 is very clear on how the Reserve Component may provide DSCA. Note that this rule is exclusive of the National Guard when serving in their State Active Duty status over which the DoD has no jurisdiction. The policy states, “DSCA may be provided through RC Service-members participating with Federal, State, and local civil agencies only when requested and approved by the Secretary of Defense or other designated official. . . . The primary basis for R[eserve] C[omponent] participation is to meet DoD program requirements and therefore costs of the program are paid by the DoD Component, except when the R[eserve] C[omponent] service-members are supporting an approved R[equest] F[or] A[ssistance] with reimbursement from the requesting department or agency, including Federal Emergency Management Agency (FEMA) mission assignments in support of a Presidentially declared emergency or disaster. In these cases, costs will be on a reimbursable basis in accordance with [DoDD 3025.18].” (paragraph 2.a of DoDD 3025.18)

For the Naval Reserve, once Hurricane Harvey approached (29 Aug 17), reservists that were available began to arrive on site and to augment the existing units located at Naval Station Norfolk. Once Hurricane Irma made landfall and it became evident that 24/7 operations would be necessary, the issue became the lack of available funding. U.S. Fleet Forces Command began

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exploring the possibility of getting reserve support through 10 USC § 12302(a), which allows for involuntary recall to support the Presidential disaster declaration under the Stafford Act. Involuntary recall of reservists requires Secretary of the Navy (SecNav) approval (delegated for recall of up to 30 days by SecDef Memo dated 7 Mar 13; beyond 30 days requires SecDef approval). This meant that the request had to be approved by SecNav, but the request had to begin as a Request for Forces to NORTHCOM. The SecDef memorandum requires this step in the process to validate the need for the requested forces. The Request for Forces was submitted to and approved by NORTHCOM. Subsequently, NORTHCOM released a Request for Forces approval message.

The request was then forwarded to SecNav where a funding source was identified and the request approved. The result was that ten reservists were activated to support the Maritime Operations Center. Note that the position of the Office of the Secretary of Defense was that a State signature on a FEMA Mission Assignment was not required prior to approving involuntary mobilization of reserve forces under 10 USC 12302(a). Additionally, several Navy Emergency Preparedness Liaison Officers were involuntarily recalled. Navy Emergency Preparedness Liaison Officers are reservists who are in a special category known as Individual Mobilization Augmentees under DoDI 1235.11. The Navy Emergency Preparedness Liaison Officers does not have an active duty counterpart. Instead, the Navy Emergency Preparedness Liaison Officers Program is 100% comprised of reserve component Individual Mobilization Augmentees. Initially there was confusion over who needed to fund and who must submit a Request for Forces. Navy Emergency Preparedness Liaison Officers are not a service program, but part of a SecDef Program under DoDI 3025.23 (Domestic Defense Liaison with Civil Authorities). Moreover, 10 USC 12302(a) was specifically enacted to activate units and individuals most capable of rapid response to save lives and mitigate human suffering responding to a declaration of a major disaster or emergency under the Stafford Act (e.g. Emergency Preparedness Liaison Officers /Navy Emergency Preparedness Liaison Officers). After examination of this issue, it was determined that a Request for Forces was required by NORTHCOM.

Conclusion: Yes. T-10 reservists may be recalled to support the Federal response to domestic disasters. However, this should not be confused with a commander's Navy Emergency Preparedness Liaison Officers. Commanders may not bring members of the reserve component on orders in any status for the specific purpose of providing civil support under the commander's Immediate Response Authority. Also, Army Reserve Unit Commanders must ensure that all personnel conducting operations under Navy Emergency Preparedness Liaison Officers are in a paid duty status [U.S. Army Reserve Command OPORD 18-046, Annex C, Appendix 3, para 3(c)(5.a)].

There are additional restrictions for the National Guard. DoDI 1215.06 strictly prohibits National Guard performance of Annual Training in response to an emergency. "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-

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planned annual training event when, at the discretion of the Adjutant General, the work performed satisfies or complements the unit's wartime mission or annual training objectives.” (DoDI 1215.06, encl. 3, para. 4.a(1)) However, National Guard personnel on Inactive Duty Training may provide Operational Support in accordance with DoDI 1215.06, encl 3., para. 2.a.(1) which states “Units or individuals that participate in IDT may provide support to mission requirements (i.e., OS) as a result of the training.” Unlike Full Time National Guard Duty – Annual Training, there is no prohibition in DoDI 1215.06 to rescheduling Inactive Duty Training. The activities performed must still constitute training. The operational support benefit gained by the State is incidental.

Issue: May the Selected Reserve and certain Individual Ready Reserve members be involuntarily recalled to support the Federal response to domestic disasters?

Authority(ies): 10 U.S.C. § 12304(a) (Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency); Secretary of Defense Memorandum, Delegation of Authority under Title 10, U.S.C., Section 12304(a), 7 Mar 2013

Discussion: Approximately one week following landfall of Hurricane Harvey, reservists from the Department of the Navy and U.S. Army were activated under 10 USC 12304(a), and began to arrive at the U.S. Northern Command, Office of the Staff Judge Advocate. Their purpose was to augment the staff. As Hurricanes Irma and Maria occurred, multiple, simultaneous responses from the total force were required. Also, 24/7 staff operations continued. It became apparent that additional reservists were needed to support the 24/7 manning requirement. The issue was that reserve funding had been exhausted. Therefore, the ability to recall reserves under 10 U.S.C. § 12304(a) was considered.

The authority to involuntarily recall reservists was delegated to the services by SECDEF Memorandum, Delegation of Authority under Title 10, U.S.C., Section 12304(a), 7 Mar 2013. This delegation meant that the recall request had to go to service secretary. However, the request had to begin as a request for forces to U.S. Northern Command. The SECDEF memorandum requires this step in the process to validate the need for the requested forces. The request for forces was submitted and approved by U.S. Northern Command. Next, U.S. Northern Command released a request for forces approval message. The package was then forwarded to the service secretary where a funding source was identified and the request approved. A State signature is not required on a FEMA mission assignment prior to approving involuntary mobilization of reserve forces under 10 USC 12304(a).

10 U.S.C § 12304 states as follows: “Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency. (a) Authority.— Notwithstanding the provisions of section 12302(a) or any other provision of law, when the President determines that it is necessary to augment the active forces for any named operational mission or that it is necessary to provide assistance referred to in subsection (b), he may authorize the Secretary of Defense and the Secretary of Homeland Security with respect to

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the Coast Guard when it is not operating as a service in the Navy, without the consent of the members concerned, to order any unit, and any member not assigned to a unit organized to serve as a unit of the Selected Reserve (as defined in section 10143(a) of this title), or any member in the Individual Ready Reserve mobilization category and designated as essential under regulations prescribed by the Secretary concerned, under their respective jurisdictions, to active duty for not more than 365 consecutive days.”

Secretary of Defense Memorandum, Delegation of Authority under Title 10, U.S.C., Section 12304a, 7 Mar 2013, states as follows: “¶ 2: The Secretaries of the Military Departments may further delegate this authority, but only to civilian subordinates who are appointed to their offices by the President, by and with the advice and consent of the Senate. This delegated authority may be exercised only after a Governor requests Federal assistance in responding to a declaration of a major disaster or emergency (as those terms are defined in section 102 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (title 42, U.S.C., section 5122), by the President and in support of a request for forces from the responsible Combatant Commander. The intent of this delegation is to issue orders to units and individuals most capable of rapid responses to save lives and mitigate human suffering”

Conclusion: Yes. Under 10 U.S.C § 12304(a), the Selected Reserve and certain Individual Ready Reserve members may be involuntarily recalled to support the Federal response to domestic disasters. The approval of the request for forces process should include the SECDEF approval to use these forces, as restricted under the DSCA Execute Order or other DoD instructions. In the event of DoD delegation of authority for one instance, a separate request and DoD approval would need to be submitted for separate instances. The 2017 hurricane season highlighted this gap because the domestic response overlapped with an international support effort. For example, if a request for forces is approved for a Military Police Battalion or a Group 5 unmanned aircraft system, then all of the authorities to fully employ these resources should also be provided. A Group 5 unmanned aircraft system is the largest class of system with a maximum gross takeoff weight greater than 1,320 pounds and a normal operating altitude greater than 18,000 feet.

D.5—D.C. National Guard Disaster Response (Commanding General Authority and Funding)

Issue: Does the Commanding General of the National Guard of the District of Columbia have the authority to order members of the National Guard of the District of Columbia to provide assistance under the “training” or “other duty” clauses found in 32 U.S.C. Section 502(f)?

Authority(ies): 32 U.S.C. § 502(f); DoDI 1215.06 (Uniform Reserve, Training, and Retirement Categories for the Reserve Components); DoDD 3025.18 (DSCA); EO 11485 (Supervision and Control of the National Guard of the District of Columbia); Title 49 of the District of Columbia Code, Subtitles I and III (District of Columbia Military Organization; Military Compacts)

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Discussion: First, in accordance with EO 11485, “The Secretary of Defense [...]is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter “National Guard”) while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order the National Guard under Title [4]9 of the District of Columbia Code to aid the civil authorities of the District of Columbia.” Also, under D.C. Code 49-409, the President of the United States is the Commander-in-Chief of the D.C. National Guard. Second, it is important to understand that each normal day of “drill” for a member of the National Guard counts as one “period.” A member of the National Guard gains credit for two “periods” during a normal drill weekend, Saturday and Sunday.

The aforementioned sheds light on the statement found in enclosure 3, paragraph 2.a.2(a) of DoDI 1215.06, “the 48 annual periods of IDT [inactive duty training] are regularly scheduled IDT as authorized for members of the Ready Reserve pursuant to requirements in section 10147 of [Title 10] or section 502(a) of [Title 32].” Chief of the National Guard Bureau Instruction (CNGBI) 1302.01 states, “Commanders may order members performing duty under 32 U.S.C. § 502(f) to respond to an emergency in accordance with the Immediate Response Authority in reference [DoDI 3025.18] and State law. Commanders directing members in a 32 U.S.C. § 502(f) duty status under this authority must immediately notify the National Guard Coordination Center (NGCC). The C[hief] [of the] N[atational] G[uard] B[ureau] must approve the use of N[atational] G[uard] members in a 32 U.S.C. § 502(f) duty status for Immediate Response activities exceeding 72 hours.”

Therefore, when all of the rules are read in the proper context, under administrative authority delegated by SecDef, the Commanding General, D.C. National Guard, may order members of the D.C. National Guard to provide assistance under the “training or other duty” clause found in 32 U.S.C. § 502(f)(1). (Appendix O)

Conclusion: Yes, if authority has been delegated by SecDef, then the Commanding General of the D.C. National Guard has the authority to order members of the D.C. National Guard to provide assistance under the training” or “other duty” clauses found in 32 U.S.C. Section 502(f).

PRACTICE TIPS: Further, the “training or other duty” clause in 32 U.S.C. § 502(f)(1) has proven to be somewhat confusing. Therefore, the following sample uses are provided:

Current counterdrug missions are conducted under 32 U.S.C. § 112 which authorizes the funding for National Guard counterdrug program and directs the actual duty is to be performed pursuant to 32 U.S.C. § 502(f). Innovative Readiness Training is conducted under 10 U.S.C. § 2012 and 32 U.S. § 508 where both rules allow the DoD to support certain organizations if such assistance is authorized by a provision of law, other than § 2012 or § 508, and is not in competition with a commercial entity and/or the provision of such assistance is beneficial to

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military training. National Guard members perform such duty in a Title 32 status. 10 U.S.C. § 12310(c) which provides that Weapons of Mass Destruction/Civil Support Teams (CSTs) may perform missions under 32 U.S.C. § 502(f).

During Hurricane Harvey, certain members of the Air National Guard deployed in their 32 U.S.C. § 502(f)(1)(B) status for “training,” converted to their State Active Duty status when employed in the Area of Operation, then converted back to their 32 U.S.C. § 502(f)(1)(B) status for redeployment. During the deployment, the Airmen would perform tasks that were essential to their war-training to ensure their readiness (Mission Essential Task List - METL) which allowed them to be placed in their status under 32 U.S.C. § 502(f)(1)(B). Once in the Area of Operation, their tasks performed were not part of their Mission Essential Task List. As a result, they converted from their status under 32 U.S.C. § 502(f)(1)(B) to their State Active Duty status. Once their mission in the AO was complete, they converted back to their 32 U.S.C. § 502(f)(1)(B) and performed mission essential tasks for redeployment. Some may ask, “Why don’t the personnel stay in their State active duty status the entire time?” When members of the National Guard serve in their 32 U.S.C. § 502(f)(1) status, funding comes from the home State’s training budget which makes sense because the functions performed are within the service-member’s Mission Essential Task List to the benefit of that State’s National Guard. When responding to disasters or emergencies in other States, once the service-members from the supporting State arrive in the affected State, they are no longer training. Instead, they are performing tasks in support of another State. As a result, they switch from their T-32 status to State Active Duty so the affected State may properly account for expenses incurred as required for FEMA reimbursement.

In accordance with regulations prescribed by the Secretary of the Army or Secretary of the Air Force, requests under 32 U.S.C. § 502(f)(1) may be submitted from the State to SecDef. Also, the “training” performed may incidentally benefit an operational mission. Under 32 U.S.C. § 502(f)(2), the training or other duty performed may be in support of operations or missions led by the DoD. If the training or other duty is performed under 32 U.S.C. § 502(f)(2), then it is at the request of the POTUS or SecDef.

Further, SecDef may delegate authority to the Chief of the National Guard Bureau to approve members of the National Guard to perform training or other duty under 32 U.S.C. § 502(f)(1). Funding for 32 U.S.C. § 502(f)(1) comes out of the State’s training funds. These funds are federally appropriated funds. If serving under 32 U.S.C. § 502(f)(2), then additional funding is provided by the Federal government.

Issue: Is it a violation of the Purpose Statute if, under 32 USC 502(f)(2)(A), someone other than the POTUS or the Office of the Secretary of Defense requests and approves the D.C. National Guard to provide support to another State or territory in response to a Request For Assistance?

Authority(ies): 31 U.S.C. § 1301(a) (The Purpose Statute); 32 USC 502(f)(2)(A); Executive Order 11485 (Supervision and Control of the National Guard of the District of Columbia)

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Discussion: The Purpose Statute states that, “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” For there to be a violation of the Purpose Statute, appropriated funds must be used for an unintended or unauthorized purpose as set by Congress. 32 USC 502(f)(2) states, “The training or duty ordered to be performed in paragraph (1) may include the following: (A) Support of operations or missions undertaken by the member’s unit at the request of the President or Secretary of Defense.” For contextual purposes, it is also necessary to understand the content of Section 1 of Executive Order 11485 which states, “The Secretary of Defense, except as provided in section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter “National Guard”) while in militia status. . . . Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status.” Section 3 states, “The Commanding General and the Adjutant General of the [D.C.] National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.” Therefore, if a valid R[equest] F[or] A[ssistance] exists, and should the Commanding General approve the D.C. National Guard to provide support to any other State or territory, such an act is not a violation of the Purpose Statute if the Commanding General was provided with such authority by the Secretary of Defense. (Appendix O)

Conclusion: No. There is no violation of the Purpose Statute if, under 32 USC 502(f)(2)(A), someone other than the POTUS or the Office of the Secretary of Defense (OSD) requests and approves the D.C. National Guard to provide support to another State or territory in response to a Request For Assistance if the person, such as the Commanding General of the D.C. National Guard, was provided with such authority by the Secretary of Defense.

Issue: In response to a valid Request For Assistance, is it a violation of the Purpose Statute and/or the Anti-Deficiency Act for the D.C. National Guard to use its personnel appropriated funds to send and sustain personnel during disaster response efforts?

Authority(ies): 31 U.S.C. § 1301(a) (The Purpose Statute); 32 U.S.C. § 502(f)(1); The Stafford Act, 42 U.S.C. § 5121, et. seq.

Discussion: The Purpose Statute, 31 U.S.C. § 1301(a), states that, “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.” In this instance, a major disaster was declared by POTUS under Section 102 of the Stafford Act, 42 U.S.C. § 5122(2). In accordance with the Act and upon POTUS declaration, Federal funds are made available for expenditure in direct support of the event. These funds may be provided by FEMA directly to the State(s) effected by the disaster or to a Federal agency/activity for distribution to supporting States in accordance with the authorized purpose. In this case, FEMA provided National Guard Bureau, a Federal activity, with funds to expend by distribution to supporting States in accordance with the purpose. D.C. National Guard wished to

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support the Puerto Rico National Guard within the confines of the current Request For Assistance process and sought funding from the National Guard Bureau. In the alternative, the D.C. National Guard was willing to use its personnel appropriation to send D.C. National Guard personnel in support of the mission for training purposes.

Unless otherwise authorized by law, funds appropriated by Congress to the National Guard for personnel may be expended only for the purposes stated. This particular appropriation may be used for National Guard personnel “while undergoing training, or while performing drills or equivalent duty or other duty” D.C. National Guard desired to send National Guard service-members to support the hurricane response efforts under 32 U.S.C. § 502(f)(1)(B). The pertinent section of the law states, “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 be ordered to perform training or other duty in addition to that prescribed under subsection (a).” Subsection (a) covers assembly for required drill and instruction, and participation in training. Therefore, if the D.C. National Guard was to use its personnel funds to send and sustain personnel during hurricane response efforts under 32 USC 502(f)(1)(B), so long as the Commanding General had proper authority delegated by SecDef, there would be no violation of the Purpose Statute nor the Anti-Deficiency Act.

Conclusion: No. It is not a violation of the Purpose Statute nor the Anti-Deficiency Act for the D.C. National Guard to process a request through the National Guard Bureau Joint Information Exchange Environment because the funds expended to support the National Guard hurricane response to the States were allocated to National Guard Bureau for the specific purpose of funding the very type of activities that the D.C. National Guard sought to perform in the US Virgin Islands and Puerto Rico.

PRACTICE TIP: In 2005 during the response to Hurricane Katrina, the Chief of the National Guard Bureau responded to a request from the Commanding General of the National Guard for the District of Columbia. The request was for authorization to deploy D.C. National Guard service-members to support the hurricane response efforts while in their T-32 training status under the provisions of 32 U.S.C. § 502(f)(1). The Chief of the National Guard Bureau recommended approval of the request so long as the service-members were performing Mission Essential Task List-related tasks. In addition, approval was subject to the availability of funds. While provision of the support may be legal, commanders are faced with other factors such as unit capabilities, cost, and availability. Commanders may also be faced with questions such as whether there are other State National Guards closer to the incident with same or similar capabilities? Are the necessary personnel from the other State National Guards available and ready to go? Can those other State National Guards provide support with service-members in their State Active Duty status versus T-32? Thus, while provision of support by certain units may make sense legally, it may not make sense operationally.

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D.6—32 U.S.C. § 502(f) Status

Issue: In response to a major disaster or emergency, may members of the National Guard serve in an “operational support” status under 32 U.S.C. § 502(f)(2)?

Authority(ies): 32 U.S.C. § 502(f)(2); DoDI 3025.22 (Use of the National Guard for DSCA); DoDI 1215.06 (Uniform Reserve, Training, and Retirement Categories for the Reserve Components); Chief of the National Guard Bureau Instruction 3000.04 (National Guard Bureau Domestic Operations)

Discussion: Historically, the National Guard has been used in a status other than State Active Duty when responding to a major disaster or emergency. In fact, for most large disaster or emergency responses where the POTUS has made the proper declarations, National Guard personnel transition between State Active Duty and T-32 status depending on the situation, requests, approvals, and authorities. Under DoDI 3025.22, if DoD receives a reimbursable request from a Federal department, agency, or qualifying entity pursuant to the DoD DSCA policy (DoDD 2025.18), and the National Guard is chosen as the sourcing solution pursuant to a Combatant Commander’s Request for Forces, there is concurrence from the applicable State Governor(s), and there is a determination by SecDef to approve the use of the National Guard in a duty status pursuant to section 502(f) of Title 32 for DSCA to respond to the approved request, then the National Guard may provide operational support in a section 502(f)(2) status. Under DoDI 1215.06, “The purpose of FTNGD-OS is to provide the necessary skilled manpower assets to support existing or emerging requirements pursuant to section 502(f). . . .” Knowledge of this information helps to solidify the validity of National Guard personnel serving in a status under 502(f) when supporting disaster response efforts.

Conclusion: Yes. In response to a major disaster or emergency, members of the National Guard may serve in an “operational support” status under 32 U.S.C. § 502(f)(2).

D.7—National Guard Weapons and Ammunition

Issue: When responding to a Request For Assistance from a civil authority, may members of the National Guard bear arms? If so, what are the rules that govern transportation of their weapons and ammunition across State lines?

Authority(ies): 18 U.S.C. § 1385 (Posse Comitatus Act); National Guard Regulation 500-5 (National Guard Law Enforcement and Mission Assurance Operations); DoDI 3025.21 (Defense Support to Civilian Law Enforcement Agencies); DoD 4500.9-R-Part II [The Defense Transport Regulations]; Public Law 104-321 (Emergency Management Assistance Compact); National Guard Regulation 500-5 (National Guard Law Enforcement Support and Mission Assurance Operations)

Discussion: This issue is rooted in the Posse Comitatus Act, State law, and Federal transportation regulations. First, 18 U.S.C. § 1385 states, “Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any

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part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this title or imprisoned not more than two years, or both.” Sometime later, Congress passed 10 U.S.C. § 275 which instructed SecDef to issue policy “to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under this chapter does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar activity unless participation in such activity by such member is otherwise authorized by law.” Among other policies, SecDef issued DoDI 3025.21, “Defense Support to Civilian Law Enforcement Agencies.” The policy does not apply to “N[ational] G[uard] personnel in State [A]ctive [D]uty or [T]itle 32, U.S.C. . . ., status.” (Appendix K)

Second, National Guard Regulation 500-5, paragraph 3-1.a states, “It is the policy of the Department of Defense and the National Guard Bureau that the National Guard shall cooperate with and provide military assistance to civil authorities as directed by and consistent with applicable State and Federal laws, policies, directives and executive orders. This military assistance to civil authorities includes domestic law enforcement support and mission assurance operations.” The regulation goes on to state that, “State laws and policies govern the use of National Guard Soldiers and Airmen in support of domestic law enforcement support and mission assurance operations while serving in [S]tate active duty and US Code, Title 32 statuses.” When the Act and policies are read together, it becomes clear that National Guard personnel may bear arms when responding to a Request For Assistance from a civil authority in their State Active Duty and T-32 statuses.

Third, as to transporting National Guard weapons and ammunition across State lines when on orders to support a disaster response, the Defense Transport Regulations, DoD 4500.9-R-Part II, provides the “policies, procedures, and responsibilities for the movement of DoD-regulated Hazardous Material by all modes, military and commercial, operated by DoD-affiliated personnel.” (Ch. 204, para. A(2)) The Defense Transport Regulations includes the National Guard within its definition of military personnel drivers that can be licensed with Hazardous Material training endorsements. (para. B(3)(b)) The Defense Transport Regulations characterizes ammunition, explosives, and munitions as Hazardous Material. (para. A(2)) The movement of Hazardous Material via commercial surface means “must comply with local, State, Federal (49 CFR), and international laws and regulations and [Status-of-Forces Agreements] SOFA, [Standard North Atlantic Treaty Organization (NATO) Agreements] STANAG, [Host Nation] HN, and DoD Component/Service/Agency HQ publications.” (para. C(2)) However, the regulation does not mention the obligation for military transporters to comply with local and State laws and regulations if transportation is arranged by military vehicle surface movement off the installation.

In accordance with the Defense Transport Regulations, “Transportation units and Service tactical and combat units must adhere to the requirements of 49 CFR when moving HAZMAT over public highways for the purpose of transportation.” (Defense Transport Regulations, Part II, at para. C(5)(c)) Based on a reading of Part II, Chapter 204 of the Defense Transport Regulations, provided the military surface movement unit complies with the requirements of the

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Defense Transport Regulations, and where required by 49 Code of Federal Regulations, then the transportation of ammunition across State lines should not require additional State authorization. For purpose of interpreting the Hazardous Materials Regulations, the National Guard Bureau focal point for coordinating the movement of the Hazardous Material may request additional information from the DoD Services Hazardous Material Focal Point listed in figure 204-2 of chapter 204.

National Guard personnel serving on State Active Duty status are not operating under Federal regulations, nor are they performing a Federal purpose. Thus, when performing in their State Active Duty status, National Guard personnel should not look to Defense Transport Regulations. Because the National Guard falls under the State's laws, it would be prudent for the State to coordinate transit between States. At this point, the language contained in the Emergency Management Assistance Compact must be addressed. National Guard Regulation 500-5, paragraph 5-3(e)(5) states, "All members authorized to carry firearms must have received training, achieved service qualification standards, and possess a current qualification testing on the type of firearm to be carried." It would make good practice that, along with the other training that a service-member must take before participating in a domestic response, that verification of weapons qualification becomes part of the training checklist.

Public Law 104-321, the Emergency Management Assistance Compact, does not provide the authorization for National Guard personnel to conduct law enforcement missions. Arrest authority is specifically exempted from the scope of the compact. Article IV of the Model Emergency Management Assistance Compact states, "Each party [S]tate shall afford to the emergency forces of any party [S]tate, while operating within its [S]tate limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving [S]tate, duties, rights, and privileges as are afforded forces of the [S]tate in which they are performing emergency services." Emergency forces will continue under the command and control of their regular leadership, but the organizational units will come under the operational control of the emergency services authorities of the State receiving assistance. As to the use of military force, Article XIII of the Emergency Management Assistance Compact states, "Nothing in this compact shall authorize or permit the use of military force by the National Guard of a [S]tate at any place outside that [S]tate 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 section 1385 of Title 18."

To specifically address the issue of cross-State Law Enforcement Agency mission support, some States have entered into supplemental agreements between the sending and receiving States, which specifically authorizes the National Guard personnel from the sending State to perform Law Enforcement activity, which includes bearing arms.

Conclusion: Yes. When responding to a Request For Assistance from a civil authority, members of the National Guard may bear arms in their home-State and in other States supported so long as 1) they receive the proper training and obtain the proper qualifications beforehand; 2) adhere to the Defense Transport Regulations when applicable; and 3) the States enter into a

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supplemental Law Enforcement agreement if the support provided is pursuant to the Emergency Management Assistance Compact.

D.8—National Guard Linguist to T-10 Units

Issue: Should National Guard Counterdrug personnel (Spanish speaking linguists) be integrated into an active component unit responding to a Request For Assistance in Puerto Rico?

Authority(ies): 32 U.S.C. § 112 (Drug Interdiction and Counter-Drug Activities); Chief of the National Guard Bureau Instruction 3100.01A (National Guard Counterdrug Support)

Discussion: In accordance with 32 U.S.C. § 112, the National Guard receives appropriated funds to support National Guard personnel in the performance of “drug interdiction and counterdrug support” as a primary purpose. However, National Guard counterdrug personnel on Full Time National Guard Duty-Counterdrug (Operational Support) orders pursuant to 32 U.S.C. § 112, are required to, in addition to performing “drug interdiction and counterdrug activities,” perform training and to maintain their military skills as required by para. (b)(2). The funding provided includes the cost of training necessary to perform training activities associated with their primary Military Occupational Specialty. In the actual instance, the request to the National Guard came from an active component engineer battalion. In response to Hurricane Irma, the battalion planned to provide support in Puerto Rico and requested that the Puerto Rico National Guard provide 4 Spanish speaking linguists. It became evident that it was more practical to use the Puerto Rico National Guard as the sourcing solution - either using M-Day members in a training status, other Full Time National Guard Duty status, or State Active Duty, as the case may be, by providing incidental support, non-interference support, or “Immediate Response” (if requested by a civil authority).

Conclusion: No. As it specifically pertains to this fact pattern, instead of integrating into the active component unit responding to the Request For Assistance in Puerto Rico, the Puerto Rico National Guard Counterdrug personnel provided the necessary interface in their State Active Duty status.

D.9—Medical Personnel

Issue: May Civilian Directors of Psychological Health personnel employed under Title 5 of the United States Code travel on TDY to support a request for behavioral health assistance?

Authority(ies): Title 5 of the United States Code (Government Organization and Employees); 32 U.S.C. § 709 (Technicians: Employment, Use, Status); 10 U.S.C. § 10503 (Functions of the National Guard: Charter); 28 U.S.C. § Chapter 171 (Tort Claims Procedure; 5 C.F.R. (Administrative Personnel); 20 C.F.R. Part 10 (Claims for Compensation Under The Federal Employees’ Compensation Act, As Amended); DoDI 1400.25 (DoD Civilian Personnel Management System); DoDD 5105.77 (National Guard Bureau); Chief of the National Guard Bureau Instruction 1701.01 (Manpower and Organization Policies and Standards)

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Discussion: Unlike civilians employed as Technicians under Title 32 of the United States Code (T-32), civilians employed under Title 5 of the United States Code (T-5) are not constrained by the statutory [Technician Act, see 32 U.S.C. § 709(a)] restrictions to organize, administer, instruct, or train the National Guard. Further, T-5 civilian employees are not limited to maintenance and repair of supplies issued to the National Guard or the armed forces nor the performance of additional duties as assigned by competent authority on a noninterference basis. Therefore, in this context, T-5 civilian employees have greater potential use for a broad spectrum of missions than T-32 Technicians.

The Position Description for Directors of Psychological Health providers States the primary purpose of this 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. The Position Description also provides that clinical and administrative duties should focus on outreach, education and prevention, and needs based psychosocial assessment, diagnosis and short-term problem resolution. Directors of Psychological Health are also tasked with the provision of or referral for evidence-based interventions. Furthermore, per the Position Description, the Directors of Psychological Health is to ensure clinical mental health services provided are integrated with other counseling and support services available at the installation, Federal, State, and territorial level, as well as military and non-military organizations (i.e. Military OneSource, Military and Family Life Consultants, and the TRICARE Network). The scope appears to be within the terms of the Directors of Psychological Health Position Description.

T-5 civilian employees are covered by the Federal Tort Claims Act, 28 U.S.C. § 1346, 2671-2680. The scope of a TDY mission to support a request for behavioral health assistance appears to be within the scope of employment for the Directors of Psychological Health Position Description. Subsequently, should a Directors of Psychological Health be sued in their official capacity while performing within the scope of their official duties, they are likely to be substituted, and represented by the Department of Justice. The Department of Justice has also historically represented T-5 and T-32 professionals in malpractice and licensure complaints when the professional was acting within the scope of their employment.

Conclusion: Yes. Directors of Psychological Health Personnel employed under T-5 may travel on TDY to support a request for behavioral health assistance so long as the support is provided within the scope of their employment.

Issue: What is the scope of medical treatment that DoD healthcare providers may provide to non-DoD personnel, both under Immediate Response Authority and other authority? May DoD bring patients to U.S. Navy ships for medical treatment?

Authority(ies): Bureau of Medicine and Surgery Instruction 6320.103; Navy Regulations 0924; Office of the Chief of Naval Operations Instruction 6400.1C/Marine Corps Order 6400.1

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Discussion: Several legal questions arose regarding the provision of medical services under Immediate Response Authority and beyond. Additionally, the USS Comfort arrived in Puerto Rico later in relief operations and began accepting patients onboard. Bureau of Medicine and Surgery Instruction 6320.103, Section 1, provides that “patients who require emergent care to prevent undue suffering or loss of life or limb as deemed by the MTF [medical treatment facility] treating physician, but whose eligibility is questionable, will be provided treatment as necessary to stabilize the patient.” Enclosure (2) of the Instruction goes on, under the heading Civilian Emergencies, to clarify that “[i]n an emergency, any person who is authorized care in Navy MTFs to prevent undue suffering or loss of life or limb. Care will be limited to that necessary only during the period of the emergency. If further treatment is indicated, initiate action to transfer the patient to a private physician or civilian treatment facility as soon as possible. Charges for medical care will be at the full reimbursable rate”; except that “civilians treated during a declared state of emergency will not be charged for outpatient care and charged only the subsistence rate if they are provided inpatient care.” Furthermore, Navy Regulation 0924 addresses medical and/or dental care to persons not in the naval services.

Navy Regulation 0924 provides that the senior officer present may require the officers of the Medical Corps and Dental Corps under his or her authority to render emergency professional aid to persons not in the naval service when such aid is necessary and demanded by the laws of humanity or the principles of international courtesy. Also applicable is Office of the Chief of Naval Operations Instruction 6400.1C/MCO 6400.1, enclosure (3), which provides that in life-threatening emergencies, the Independent Duty Corpsman should follow basic life support guidelines.

Conclusion: Yes. Medical treatment to save life or limb is authorized if deemed necessary by the Medical Treatment Facility treating physician or the senior medically qualified official on scene. In addition, patients may be brought onboard U.S. Navy ships to receive treatment to save life or limb. Medical treatment beyond emergency and stabilization care requires a Mission Assignment from FEMA.

D.10—Use of the Active Guard and Reserve

Issue: May personnel in the Active Guard Reserve program be used in disaster response?

Authority(ies): 10 USC 101 (Definitions); 10 USC 12310 (Reserves: For Organizing, Administering, etc., Reserve Components); 32 USC 112 (Drug Interdiction and Counter-drug Activities); 32 USC 328(b) (Active Guard and Reserve Duty: Governor’s authority); DoDD 3025.18 (Defense Support of Civil Authorities); National Guard Regulation (Army Regulation) 600-5 (The Active Guard Reserve (AGR) Program Title 32, Full Time National Guard Duty Management); Air National Guard Instruction 36-101 (Air National Guard Active Guard Reserve Program); Chief of the National Guard Bureau Instruction 1302.01 (Guidance for members performing duty under the authority of 32 USC 502(f))

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Discussion: Members of the Active Guard Reserve program may perform their primary Active Guard Reserve functions during Domestic Operations. These authorized functions stem from the statutory and regulatory authority of members in the program. Under the provisions of 10 U.S.C. § 101(d)(6)(A), Active Guard Reserve duty means active duty or Full-Time National Guard Duty performed by a member of a reserve component of the Army or Air National Guard or Full-Time National Guard Duty performed by a member of the National Guard for a period of 180 consecutive days or more “for the purpose of organizing, administering, recruiting, instructing, or training” the reserve components. (National Guard Regulation (Army Regulation) 600-5, The Active Guard Reserve Program, Section II, Air National Guard Instruction 36-101, Air National Guard Active Guard Reserve Program, para. 3.1)

Members of the Active Guard Reserve program may perform other duties when specifically authorized by statute, such as when assigned to a Civil Support Team. National Guard Regulation (Army Regulation) 600-5, para. 3-4c (Emergency operations and State Active Duty) specifies, “[A] request from the President or Secretary of Defense is not required for units composed entirely of AGR members or units established by law performing specific functions in emergency situations, such as Civil Support Teams. Performing those functions in response to the specified emergency situations falls within their normal AGR duties.” (Air National Guard Instruction 36-101, para. 7.10.1.6) Members of the program may also perform other than primary duties on a non-interference basis. 32 U.S.C. § 328(b) elaborates on the duties of service-members on T-32 Active Guard Reserve orders. Additionally, both National Guard Regulation (Army Regulation) 600-5 at paragraph 3-4, and Air National Guard Instruction 36-101 at paragraph 7.10.1, similarly specify that members of the Active Guard Reserve program may perform other duties to the extent that doing so does not interfere with the performance of their primary Active Guard Reserve duties.

Lastly, members of the Active Guard Reserve program may support disaster response pursuant to a commander’s Immediate Response Authority. DoDD 3025.18, paragraph 4g, defines “Immediate Response Authority.” While National Guard Regulation (Army Regulation) 600-5 is silent on the issue of AGR use in Immediate Response, ANGI 36-101, para. 7.10.2.1 states, “AGRs may support an Immediate Response situation. Contingency situations of an emergency nature, where AGR Airmen are employed under the Immediate Response doctrine, shall be reported to the Chief, National Guard Bureau (CNGB) as soon as practicable to permit reassessment of whether there remains a necessity to employ them under that authority.” Active Guard Reserve personnel performing Immediate Response must not do so for more than 72-hours unless specifically approved by the Chief of the National Guard Bureau.

Conclusion: Yes. Members of the Active Guard Reserve program may be used in disaster response under four categories: 1) To perform their primary Active Guard Reserve duties of organizing, administering, recruiting, instructing, and training the reserve components; 2) To perform Statutory exceptions to Active Guard Reserve personnel’s enumerated duties, such as Civil Support Teams; 3) To perform other than primary duties, on a non-interference basis vis a vis their primary duties; and 4) After receipt of a request from a civil authority, to perform duties under a commander’s Immediate Response Authority in an effort to save lives, prevent human suffering, or mitigate great property damage.

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D.11—Search and Rescue

Issue: Can the U.S. Navy assist the USCG with conducting maritime Search and Rescue missions?

Authority(ies): 14 U.S.C. § 141 (Cooperation with Other Agencies, States, Territories, and Political Subdivisions)

Discussion: The USS KEARSARGE, a USN Wasp-class amphibious assault ship, was in the vicinity of the U.S. Virgin Islands after Hurricane Irma struck. The ship was prepared to engage in hurricane relief efforts, however, it had not yet received formal tasking from its chain of command. Absent tasking from higher, or a situation in which the ship's commander could utilize Immediate Response Authority, some other source of authority was needed to allow the ship to assist in the relief effort.

Knowing the location and capabilities of the USS KEARSARGE, the USCG submitted a Request For Assistance to the ship under 14 U.S.C. § 141. The request was to support the USCG in the performance of the Search and Rescue mission. 14 U.S.C. § 141 provides that the USCG may, with the consent of the head of the agency concerned, avail itself of such officers and employees, advice, information, and facilities of any Federal agency, State, territory, or political subdivision thereof, or the District of Columbia as may be helpful in the performance of its duties. Once this request was made, the USS KEARSARGE was able to assist with Search and Rescue missions.

As the response effort matured, efforts were made to coordinate with FEMA to ensure they had awareness of the activities being conducted by the USS KEARSARGE. The ultimate goal was to have the USS KEARSARGE receive a FEMA Mission Assignment for the work it was conducting. This Mission Assignment would provide specific tasking that would best assist the unified response effort and provide for reimbursement from FEMA.

Conclusion: 14 U.S.C. § 141 provides that the USCG may avail itself of such officers and employees, advice, information, and facilities of any Federal agency as may be helpful in the performance of its duties. The DoD has stringent controls on the use of DoD assets during domestic response operations. There may be some lag time between the arrival of DoD assets and a FEMA Mission Assignment which will provide the authority and funding to operate. 14 U.S.C. § 141 is a tool that can be used during that gap to provide authority for quick engagement of DoD assets.

D.12—Mortuary Affairs Assistance

Issue: During a disaster response, can DoD provide mortuary affairs assistance to process, recover, and transport civilian remains?

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Authority(ies): DoDD 1300.22 (Mortuary Affairs Policy); DoDD 3025.18 (DSCA); Joint Publication (JP) 4-06 (Mortuary Affairs)

Discussion: FEMA requested mortuary affairs assistance and the question arose as to whether this was a service DoD could provide. Specifically, the DoD was requested to process, recover, and transport civilian remains. According to paragraph 3.k. of DoDD 1300.22, it is DoD policy to provide mortuary affairs support and transportation for civilian remains in the U.S. through DSCA assistance, when such assistance is approved and directed in accordance with DoDD 3025.18 (DSCA). Chapter VII of JP 4-06 discusses the provision of mortuary affairs support in more detail. The primary legal concerns with providing mortuary affairs support to civil authorities under DSCA is ensuring that the DoD personnel are acting under the leadership and coordination of the State's Medical Examiner or Coroner who possesses jurisdictional authority over decedents within the State.

DoD mortuary affairs personnel are also limited in that they must receive appropriate authorization from the Medical Examiner or Coroner to perform any tasks. Further, DoD mortuary affairs personnel cannot perform decedent recovery tasks that entail entering civilian homes without the presence of law enforcement or Medical Examiner or Coroner personnel. In short, all authority in this area rests with the State's Medical Examiner or Coroner, and the DoD personnel, as it is with all DSCA, are providing support to the Medical Examiner or Coroner. Additionally, the mortuary affairs team is a Cat IV resource. Therefore, the NORTHCOM J3 can only validate the request. After validation, the request must be sent to the Joint Staff (JS) and the Office of the Secretary of Defense for approval before forces are assigned to the task.

Conclusion: Yes. The DoD can provide mortuary affairs assistance during DSCA operations upon receipt of approval from the Office of the Secretary of Defense.

D.13—Placing Augmentees to the National Guard Bureau Joint Enabling Team on Orders

Issue: May augmentees to the National Guard Bureau Joint Enabling Teams be placed on orders and serve in an Active Duty Operational Support-Reserve Component status?

Authority(ies): 10 U.S.C. § 12301(d); 10 U.S.C. § 12310(a)-(b); 10 U.S.C. § 10503

Discussion: The National Guard Bureau Joint Enabling Teams operate under National Guard Bureau authorities, perform duties as authorized under Title 10 of the United States Code and include Title 10 Active Guard Reserve personnel as authorized under 10 U.S.C. § 12310. In part, members of the Joint Enabling Teams serve as the Chief of the National Guard Bureau's eyes and ears on the ground. The members are organized to support National Guard Bureau functions and duties, including those listed in 10 U.S.C. § 10503. Accordingly, National Guard Bureau Joint Enabling Teams personnel are distinguishable from the State forces operating under the Emergency Management Assistance Compact. National Guard personnel operating pursuant to the Emergency Management Assistance Compact routinely perform hurricane response missions in the affected State. Those missions are conducted generally in State Active Duty

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status, and, in some limited cases, in a T-32 status. If the National Guard Bureau requests augmentees from the States to support the National Guard Bureau Joint Enabling Teams mission, the National Guard Bureau may do so and then provide the augmentees with orders under Title 10.

Conclusion: Yes. Augmentees to the National Guard Bureau Joint Enabling Teams may be placed on orders pursuant to 10 U.S.C. § 12301(d) and 10 U.S.C. § 12310(a)-(b).

E. COMPACTS AND AGREEMENTS

E.1—Legal Status of Foreign Forces

Issue: Does the North Atlantic Treaty Organization Status of Forces Agreement apply to a North Atlantic Treaty Organization nation's overseas territories and principalities?

Authority(ies): North Atlantic Treaty, 4 Apr 1949; Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces (North Atlantic Treaty Organization Status of Forces Agreement), 19 Jun 1951; United Kingdom Ministry of Defense Diplomatic Note dated 10 Sep 2017; United States Department of State memorandum for Department of Defense Executive Secretary, Subject: Request [F]or [A]ssistance to UK Hurricane Relief Operations dated 11 Sep 2017; British Embassy Washington DC, Diplomatic Note No. 69, dated 15 Sep 2017

Discussion: During the U.S. disaster response efforts in the U.S. Virgin Islands the British Royal Marines arrived without any apparent notification to the Dual-Status Commander and staff. It transpired that coordination had been conducted at diplomatic levels and between the relevant staffs. However, internal communication of the issues and coordination lagged behind the British Royal Marines arrival. On arrival, were the British Royal Marines subject to the duties and protections of the North Atlantic Treaty Organization Status of Forces Agreement?

Both the North Atlantic Treaty Organization Treaty and the North Atlantic Treaty Organization Status of Forces Agreement refer to geographical coverage. Article 6 of the NATO Treaty describes the geographical applicability of the treaty, under Article 5, as “the territory of any of the Parties in Europe or North America...on the territory of or on the Islands under the jurisdiction of any of the Parties in the North Atlantic area north of the Tropic of Cancer.” Article XX of the North Atlantic Treaty Organization Status of Forces Agreement states that the “present agreement shall apply only to the metropolitan territory of a Contracting Party.” While the term metropolitan territory is not defined in the North Atlantic Treaty Organization Status of Forces Agreement, it is accepted as referring to the home territories of the Parties, excluding overseas territories. The U.S. Virgin Islands are an organized unincorporated United States territory. Considering both the North Atlantic Treaty Organization Treaty and the North Atlantic Treaty Organization Status of Forces Agreement, the U.S. Virgin Islands are not part of the metropolitan United States and are not geographically within the area covered by the North Atlantic Treaty Organization Treaty. Therefore, neither authority applies.

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Having established that the North Atlantic Treaty Organization Status of Forces Agreement did not apply, it was necessary to consider alternative means of achieving similar protections for British personnel operating from the U.S. Virgin Islands. After initial discussions and consideration of the merits of pursuing a Memorandum of Understanding to establish protections for the British Royal Marines in the U.S. Virgin Islands, consensus was reached between Chairman's Legal Office, DoD General Counsel, USNORTHCOM SJA Office and USOUTHCOM SJA Office to allow the British to pursue Status of Forces Agreement protections under an exchange of Diplomatic Notes. These discussions also included reference to the State Department and to the British Embassy Washington.

A Diplomatic Note is a two-part exchange process (request and acceptance) that is generally conducted between the State Department and the corresponding Foreign Ministry. The British Embassy in Washington, D.C. submitted Diplomatic Note No. 69 on 15 Sep 2017 to the State Department requesting appropriate protections for British personnel. Events proceeded faster than the Diplomatic Note process. The Diplomatic Note remained outstanding for the duration of the British presence. That it remained outstanding illustrates the time that may be required for the processing and negotiation of such arrangements.

Conclusion: Neither the North Atlantic Treaty Organization Treaty nor the North Atlantic Treaty Organization Status of Forces Agreement apply south of the Tropic of Cancer or outside of metropolitan areas of the Parties to those authorities. Therefore, consideration must be given to early engagement with the State Department through the relevant Geographical Combatant Command.

PRACTICE TIP: Atlantic hurricanes are likely to include some sort of international response, which may include our North Atlantic Treaty Organization allies with territory in the Caribbean (France, the Netherlands, and the United Kingdom in particular). Geographical Combatant Command Judge Advocates should understand the legal protection for US and foreign forces operating within their respective Areas of Operational Responsibility and territories, especially regarding bordering countries noting that as an example France and The Netherlands share the landmass of Saint Martin [Saint Martin/Saint Maarten] but the only international airport is on the Dutch side. Geographic Combatant Command Judge Advocates should also engage with their foreign liaison officers to establish early coordination for events such as these, particularly in annually occurring events such as hurricane season. It cannot be assumed that other nations will deploy legal elements forward and therefore the relevant point of contact is likely to be in national capitals. The Centre de Planification et de Conduite des Operations Paris is the French central planning center. The Permanent Joint Headquarters London is the British Combatant Command.

E.2—National Guard Provision of Logistics Support to Foreign Forces

Issue: May the National Guard provide logistical support to foreign forces?

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Authority(ies): DoD Directive 2010.9 (Acquisition and Cross-Servicing Agreements), 28 Apr 2003; CJCSI 2120.01 (Acquisition and Cross-Servicing Agreements), 21 May 2015; 10 U.S.C. § 2341-42 (Authority to Acquire Logistics Support, Supplies, and Services for elements of the Armed Forces Deployed outside the United States); National Guard Regulation 130-6/ Air National Guard Instruction 36-2, United States Property and Fiscal Officer Appointment, Duties and Responsibilities, 1 Jul 2007. United Kingdom Ministry of Defense Diplomatic Note dated 10 Sep 2017; United States Department of State memorandum for Department of Defense Executive Secretary, Subject: Request [F]or [A]ssistance to United Kingdom Hurricane Relief Operations dated 11 Sep 2017, USA-GBR-02 Acquisition and Cross Servicing Agreement (8 Jan 2007).

Discussion: During the U.S. disaster response efforts in the U.S. Virgin Islands the British Royal Marines arrived in the U.S. Virgin Islands as a staging location to conduct relief operations to the nearby British Virgin Islands. When the British Royal Marines arrived on St. Croix and asked for assistance, the U.S. Virgin Islands National Guard did not quite know how to fulfill the requests. For example, was the request from the British Royal Marines reimbursable under the Stafford Act? In the case of the United Kingdom, the U.S. has an international agreement called an Acquisition and Cross-Servicing Agreement.

DoD Directive 2010.9 and CJCSI 2120.01 provide complete details on responsibilities and procedures for acquiring and transferring logistics support, supplies, and services under the authority of 10 U.S.C. § 2341 and 2342. Acquisition and Cross-Servicing Agreements when concluded between the US and another country or international organization (such as the North Atlantic Treaty Organization or the United Nations) is applicable worldwide to acquire logistics support, supplies, and services directly from or provide them to a foreign government or international organization. Compensation for acquisitions or transfers under these arrangements may be either on a cost-reimbursement basis or by exchange of supplies or services of equal value. These agreements establish principles and provisions for effecting required support, but do not bind either party to any particular monetary value or number of transactions.

Form 1-3a (rev. 06/05/2017), Acquisition and Cross Servicing Agreement /Mutual Logistics Support Order Form, is used to document the transaction for reimbursement purposes. United States Fleet Forces N413 has officers authorized to sign these forms on behalf of the US Navy. The form also requires the signature of an officer authorized to sign on behalf of the foreign military (in this case, it was a person from the United Kingdom Ministry of Defense).

The National Guard cannot conclude an Acquisition and Cross Servicing Agreement with a foreign government. However, in coordination with the Geographic Combatant Command J4 Acquisition and Cross Servicing Agreement Program Manager, the State/territory designated Acquisition and Cross Servicing Agreement manager, and the United States Property and Fiscal Officer, the National Guard has a process similar to active components to provide reimbursable logistical support to U.S. Acquisition and Cross Servicing Agreement partners as described in detail above.

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Conclusion: Yes. The National Guard may, with proper coordination through the Geographic Combatant Command J4, provide logistical support to foreign forces if there is an applicable Acquisition and Cross-Servicing Agreement.

PRACTICE TIP: Executing the Acquisition and Cross Servicing Agreement is a logistics function. The subject matter expert will be the Geographic Combatant Command J4 Acquisition and Cross Servicing Agreement Manager, and likely the component command logistics officer depending on their experience level. Judge advocates can help by understanding the parameters of the agreement relative to the situation and knowing the relevant POCs and the documents necessary to process requests for support from foreign governments. Ensuring the command's Acquisition and Cross Servicing Agreement Manager is aware of the activity so they can provide the paperwork to ensure reimbursement is key. It is also important to reinforce with your supply personnel that they must accurately account for the cost of all goods provided and services rendered to foreign militaries during operations. Commands should specify the same in all orders/FRAGOs and identify support to or from a foreign government or organization. With all initial Acquisition and Cross Servicing Agreement order(s), the costs are estimated and not final until the supply personnel ensure final costs. This is significant because some countries believe the original order is the final costs, which usually is not the case.

E.3—DoD Usage of State Owned Facilities

Issue: May the DoD enter into an agreement with the State National Guard to use State resources and facilities as the T-10 logistics tail is developing within the joint operations area (JOA)?

Authority(ies): 10 U.S.C. § 2679 (Installation-Support Services: Intergovernmental Support Agreements); DoDI 4000.19 (Support Agreements)

Discussion: Under 10 USC § 2679, a component of the DoD may enter into a support agreement with a State or local government to provide supplies, services, or resources. Under DoDI 4000.19, paragraph 2.b.2, "Support agreement approval authority is the DoD Component commander, commanding officer, or director. DoD Components may delegate this function in accordance with the concerned Component's policy." Also, the DoD agrees to reimburse the State for the support provided. In accordance with DoDI 4000.19, Encl. 3, a DoD component may enter into a support agreement with "a [S]tate or local government for support of the National Guard in accordance with Title 32 [of the United States Code.]" When reimbursement is contemplated, the type of agreement entered must be a Memorandum of Agreement. Here, during both Hurricanes Harvey and Maria, Federal military personnel ran out of end user logistics before ARNORTH, the Joint Force Land Component Command, could establish lines of communication. These personnel were responding under the commander's Immediate Response Authority and later worked under FEMA Mission Assignments. As a result, there was a shortfall in sustainment as the theater matured.

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Conclusion: Yes. Under 10 U.S.C. § 2679 and DoDI 4000.19, the DoD may enter into an agreement with the State National Guard for use of State resources and facilities so long as an Memorandum of Agreement is entered where the DoD agrees to reimburse the State.

E.4—EMAC and the D.C. National Guard

Issue: Does the Emergency Management Assistance Compact exclude the District of Columbia National Guard from accepting support from other States?

Authority(ies): Pub. L. No. 104-321 (The Emergency Management Assistance Compact); DC Code, Title 7, Section 7-2331, Chapter 23A (Emergency Management Assistance Compact)

Discussion: Under the Emergency Management Assistance Compact, the term “State” is defined as, “. . . the several [S]tates, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.” The Compact goes on to state, “On behalf of the Governor of each [S]tate participating in the compact, the legally designated [S]tate official who is assigned responsibility for emergency management will be responsible for formulation of the appropriate interstate mutual aid plans and procedures necessary to implement this compact.”

The Emergency Management Assistance Compact does not replace Federal assistance. Instead, the Emergency Management Assistance Compact acts to complement Federal resources or to provide resources when an event does not warrant Federal assistance. The Emergency Management Assistance Compact is triggered by a requesting State through a gubernatorial declaration of emergency and a Request For Assistance made through the National Emergency Management Association the organization that administers the Emergency Management Assistance Compact. (Emergency Management Assistance Compact website at www.emacweb.org)

Conclusion: No. The Emergency Management Assistance Compact does not exclude the District of Columbia National Guard from accepting support from or providing support to other States.

E.5—Emergency Management Assistance Compact and Law Enforcement

Issue: For National Guard members of supporting States performing Law Enforcement functions in a supported State, are the tort liability protections found in the Emergency Management Assistance Compact forfeited when the States enter into a Law Enforcement Memorandum of Understanding supplemental to the Emergency Management Assistance Compact?

Authority(ies): Pub. L. No. 104-321 (The Emergency Management Assistance Compact)

Discussion: In pertinent part, paragraph 3 of the model supplemental agreement to the EMAC states, “The State of ___A___ agrees that the ___B___ National Guard personnel operating in ___A___ shall have the same powers, authority and immunities as

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_____A_____ soldiers and airmen, including the power of arrest.” Paragraph 5 of the model agreement goes on to state, “Except as otherwise expressly provided within this Memorandum of Agreement, the provisions of the Emergency Management Assistance Compact are incorporated herein by reference and shall apply.” The Emergency Management Assistance Compact contains language that speaks to the tort liability protections afforded to National Guard personnel. The model supplemental agreement to the Emergency Management Assistance Compact incorporates those protections by reference. (Appendices E and K)

Conclusion: No. For National Guard members of supporting States performing Law Enforcement functions in a supported State, the tort liability protections found in the Emergency Management Assistance Compact are not forfeited when the States enter into a Law Enforcement Memorandum of Understanding supplemental to the Emergency Management Assistance Compact because the supplemental agreement incorporates the protections by reference.

E.6—National Guard Status under Emergency Management Assistance Compact

Issue: If a State deploys members of the State’s National Guard in response to a Request For Assistance under the Emergency Management Assistance Compact, does this mean that the service-members must be in a State Active Duty status only (versus Title-32)?

Authority(ies): Pub. L. No. 104-321 (The Emergency Management Assistance Compact), Title 32 of the United States Code

Discussion: “States deploy National Guard resources in SAD and T-32 under EMAC.” (National Emergency Management Association (website at www.emacweb.org) The National Emergency Management Association goes on further to state, “SAD and T-32 are duty statuses. Duty statuses are not a mechanism for a deployment outside of the home-State. EMAC serves as that mechanism and provides protections (tort liability, workers compensation, etc.) for the deploying forces. To authorize T-32 [status], the Governor of a State must request and receive approval for the use of T-32 DoD funds from the Secretary of Defense. In that case, the EMAC mission is needed as the deployment mechanism and the funding for the mission is from the DoD. A State may also use their T-32 training dollars to pay for the missions. In some States, the EMAC REQ-A must be completed in order to get the T-32 training dollars reimbursed from the DoD (if funds are available). In either case, the EMAC mission is needed as the deployment mechanism. As a note, reimbursement of the T-32 training dollars is not guaranteed; it must be approved by DoD. The deployment of resources outside of the State without EMAC may be a violation of the Anti-Deficiency Act.”

According to the Emergency Management Assistance Compact Operations Manual, Article XIII entitled Additional Provisions, “The National Guard deploys through EMAC under both Title 32 and State Active Duty for humanitarian purposes” Lastly, when reviewing the Emergency Management Assistance Compact website for information concerning allowable National Guard statuses under the Emergency Management Assistance Compact, one may find

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that National Guard personnel may operate under the Emergency Management Assistance Compact in both State Active Duty and T-32 status.

(<https://www.emacweb.org/index.php/national-guard>, last accessed on 12 February 2018).

Conclusion: No. If a State deploys members of the State's National Guard in response to a Request For Assistance under the Emergency Management Assistance Compact, deployment does not mean that the service-members must be in a State Active Duty status only. The members may be in their T-32 status as well.

E.7—Healthcare Providers under Emergency Management Assistance Compact

Issue: Under Emergency Management Assistance Compact, may healthcare providers practice in a State other than the State in which the provider is licensed?

Authority(ies): Pub. L. No. 104-321 (The Emergency Management Assistance Compact); 10 U.S.C § 1094(d) (The Medical Malpractice Immunity Act; 10 U.S.C. § 1089 (The Gonzalez Act)

Discussion: The Model Emergency Management Assistance Compact legislation includes a provision allowing those who hold a license from a supporting State to be considered licensed, certified, or permitted in the supported State. Officers and employees of the supporting State are considered agents of the supported State for liability purposes. See for example §252.926-927, Fla. Stat. (2015); GA Code § 38-3-81 (2014) Art. VVI; S.C. Code Ann. §25-9-20 Art. V-VI.; N.C.G.S. § 166A-45. Medical asset deployment and set-up is a lengthy process and could take days before medical capabilities are established and ready to receive patients. During disaster response operations, judge advocates should be aware of the rules governing healthcare provider tort liability and immunity, both State and Federal. When medical healthcare providers from the active component are involved, 10 U.S.C § 1094(d), the Medical Malpractice Immunity Act, and 10 U.S.C. § 1089, the Gonzalez Act, come into play.

Lastly, if there are material/legal differences between the licensing and definitions of healthcare provider, physician assistant, and healthcare profession, then each must be specifically addressed before the individuals are placed on orders to provide care.

Conclusion: Yes. Healthcare providers may practice in a State other than the State in which the provider is licensed. However, such service is subject to any additional legal restrictions applied by the supported State.

E.8—Credentials/Licensure Requirement for Healthcare Providers

Issue: During disaster response efforts, may DoD Healthcare Providers treat local civilians even though they do not meet local medical credential/licensure requirements? What about the liability out-of-State, of non-DoD medical health providers?

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Authority(ies): 10 USC § 1094 (Licensure Requirement for Health-Care Professionals) (as amended by NDAA FY12); Appendix 16 to Annex H and DoDI 3025.24 DoD Public Health and Medical Services in Support of Civil Authorities; Pub. L. No. 104-321 (The Emergency Management Assistance Compact); The Good Samaritan Laws of each State/Territory; 28 U.S.C. § 1346, 2671-2680 (The Federal Tort Claims Act)

Discussion: Navy medical providers were not licensed or credentialed in Puerto Rico or the U.S. Virgin Islands, which is where they were to provide treatment to non-DoD personnel. The DoD Healthcare Providers from the Navy desired verification that they could practice in those territories without meeting local credential/license requirements. The short answer was that as long as Navy medical providers are properly licensed, they may practice their professions at any location authorized by SecDef.

Applicable here is Title 10 USC § 1094 (amended by the NDAA FY12) and Appendix 16 to Annex H and DoDI 3025.24, DoD Public Health and Medical Services in Support of Civil Authorities. DoD military, civilian, and contract medical personnel who have a current, valid, and unrestricted license to practice medicine, osteopathic medicine, dentistry, or another health profession and who are properly licensed under Title 10 U.S.C. §1094(d) may practice their profession on non-DoD personnel at any location authorized by the SecDef. This authorization is implied when the SecDef approves a request for medical units to deploy to the scene of a disaster/emergency pursuant to a Request For Assistance from civil authorities. In the event that an issue arises while a Healthcare Provider is providing medical care within the scope of his/her duties, he/she will be protected by the Federal Tort Claims Act and will not face personal liability. However, this provision only allows DoD Healthcare Providers to practice under the auspices of the Military Treatment Facility, another DoD facility in the affected State, or in a Federal civilian facility as opposed to practicing in a private medical facility. Private medical facilities grant privileges directly. Military Healthcare Providers may not practice in a private facility without privileges.

In terms of Navy Corpsmen, while DoDI 3025.24 does not directly address medical personnel that are not required to have a license, according to the ARNORTH Legal Advisor and FEMA Legal Counsel, Corpsmen are still authorized to provide emergency lifesaving care to civilians during DSCA operations under a DoD-approved FEMA Mission Assignment or under Immediate Response Authority. When operating under either authority, the Corpsmen are within the scope of their employment for Federal Tort Claims Act purposes, and thus shielded from personal tort liability concerns.

For out-of-State, non-DoD medical health providers, they should not be liable for any negligence as a result of their actions, provided that they are acting within the scope of their duties in response to an actual or potential disaster. When it is established that the Military Healthcare Provider's actions are within the scope of their duties, liability, if any, shifts to either State or Federal government. First, under the Emergency Management Assistance Compact, Article VI, out-of-State practitioners are considered "agents of the requesting State for tort liability and immunity purposes; and no party State or its officers or employees rendering aid in

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another State pursuant to this compact shall be liable on account of any act or omission in good faith.” Willful misconduct, gross negligence, or recklessness are outside the scope of the Emergency Management Assistance Compact's coverage.

There is also the possibility that the Military Healthcare Provider is practicing at a private medical facility. Should this occur, there must be a memorandum of agreement in place with the facility, and it is likely that the Military Healthcare Provider would receive coverage under the private facility's malpractice insurance coverage. Prior to allowing military medical personnel to perform duties in civilian facilities, please contact National Guard Bureau-Judge Advocate-Litigation to coordinate the details.

When addressing the U.S. Virgin Islands specifically, section 42 of Title 27 (otherwise known as the “The Good Samaritan Law”) states that “no person who voluntarily and gratuitously renders emergency assistance to a person in need thereof, shall be liable for civil damages for any personal injuries or property damage which result from acts or omissions by such person in rendering emergency assistance, which may constitute ordinary negligence; Provided, however, That such immunity does not apply to acts or omissions constituting gross, willful or wanton negligence.” (Appendix E)

Conclusion: During disaster response efforts, DoD Healthcare Providers may treat local civilians even though they do not meet local medical credential/licensure requirements so long as the medical providers are properly licensed under 10 USC § 1094. Generally, the same holds true for out-of-State, non-DoD medical health providers, so long as they are acting within the scope of their duties.

F. DOMESTIC IMAGERY/INCIDENT AWARENESS & ASSESSMENT

F.1—Generally

Issue: During the response to a major disaster or emergency, may the National Guard and or T-10 forces use Incident Awareness and Assessment and/or Domestic Imagery assets?

Authority(ies): DoDD 5200.27 (Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense); AF Instruction 14-104 (Oversight of Intelligence Activities); AR 381-20 (Army Counterintelligence Program); DoD 5240.1-R (Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons); DoD Manual 5240.01 (DoD Intelligence Activities); AR 380-13 (Acquisition and Storage of Information Concerning non-Affiliated Persons and Organizations); CJCS DSCA Execute Order 071415Z Jun 13

Discussion: Under AFI 14-104, Domestic Imagery is defined as, “satellite and airborne imagery of any part of the United States, its territories, or possessions to a 12NM [nautical miles] seaward limit of these land areas.” If the Domestic Imagery capture involves the Intelligence Component, then it is referred to as Incident Awareness and Assessment. When the Incident Awareness and

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Assessment capture is in support of a DSCA mission and the Intelligence Component is Title 10 (T-10), then the Secretary of Defense is the approval authority. However, if the Intelligence Component is a member of the National Guard serving in either a State Active Duty or Title 32 (T-32) status, then a Proper Use Memorandum must be submitted through the National Guard Bureau J2 approval.

Also, prior to any submissions to SecDef, NORTHCOM requires a review for proper use for all domestic imagery under its instruction, NORAD and USNORTHCOM Instruction 14-3, Domestic Imagery. This applies to imagery collected by both intelligence and non-intelligence platforms. NORTHCOM distinguishes the review for domestic imagery collection that involves the use of Defense Intelligence Component capabilities as a Proper Use Memorandum (e.g., Global Hawk, P-8, P-3, etc.) and collection that does not involve use of a DoD intelligence community capability as a Domestic Imagery Legal Review (e.g., Civil Air Patrol, UH-60, etc.). Additionally, satellite imagery, collected both by National Technical Means and commercial sources under the authorities and licensing of the National Geospatial Agency, may only be collected and used as provided in an annual Proper Use Memorandum approved by the National Geospatial Agency. Non- National Geospatial Agency Proper Use Memorandum or Domestic Imagery Legal Review can be prepared by NORTHCOM or components for a specific event, or for annual period to cover matters such as natural disasters (e.g., hurricanes, tornadoes, floods, earthquakes, etc.), Search and Rescue, or tailored to a specific natural disaster or event. The Proper Use Memorandum or Domestic Imagery Legal Review not only specifies what type of imagery will be collected, but its purpose and who may receive the imagery.

During the DSCA response to Hurricanes Harvey, Irma, and Marie, Proper Use Memoranda and Domestic Imagery Legal Reviews by components and NORTHCOM were utilized, many overlapping. AFNORTH has standing Proper Use Memoranda and Domestic Imagery Legal Reviews for disasters and Search and Rescue, but contained limitations that the platforms were under the Command and Control of AFNORTH. NAVNORTH prepared individual Proper Use Memoranda for each hurricane, and NORTHCOM prepared Proper Use Memoranda to cover all NORTHCOM components and DOD forces allocated or allotted to the NORTHCOM DSCA response. The process for submission and approval of the Proper Use Memoranda and Domestic Imagery Legal Reviews was efficient. However, the Proper Use Memoranda and Domestic Imagery Legal Reviews only constitute a review of how domestic imagery collected can be used, and they do not provide authority for the collection. Various authorities can be leveraged for collection of domestic imagery, but each may have limitations on what can be collected how it can be used and who it can be shared with.

The current Chairman of the Joint Chiefs of Staff (CJCS) DSCA Execute Order allows collection of domestic imagery by Civil Air Patrol as a volunteer civilian auxiliary of the Air Force with or without a Mission Assignment or Request For Assistance from the Lead Federal Agency, and a Domestic Imagery Legal Review covers how that imagery may be used and disseminated. (CJCS DSCA Execute Order 071415Z Jun 13, paragraph 1.H.) “The Secretary of the Air Force has delegated approval authority to the First and Eleventh Air Force commanders for Air Force-assigned civilian auxiliary of the Air Force missions such as situational awareness, damage assessment, evacuation monitoring, and light airlift.” (CJCS DSCA Execute Order

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071415Z Jun 13, paragraph 1.H.) In similar fashion, the DSCA Execute Order reveals that, “IAA [incident awareness and assessment] resources may be requested to support first responders and decision makers in the following missions: situational awareness, damage assessment, evacuation monitoring, SAR [search and rescue], CBRNE [chemical, biological, radiological, nuclear, environmental] assessment, hydrographic survey, and dynamic ground coordination. The use of IAA [incident awareness and assessment] assets should integrate with capabilities from other Government and commercial capabilities.” (CJCS DSCA Execute Order 071415Z Jun 13, paragraph 3.C.4.J) If capabilities of the DoD Intelligence Community are utilized as part of the domestic imagery collection for other than foreign intelligence or counterintelligence purposes (e.g., DSCA), it is referred to as Incident Awareness and Assessment, and requires a Mission Assignment or Request For Assistance from the Lead Federal Agency before it may be employed. (CJCS DSCA Execute Order 071415Z Jun 13, paragraphs 3.C.2.I and 3.C.4.J; Appendix M of this publication)

Specific guidance is provided on the rules applicable to Incident Awareness and Assessment collection, retention, and dissemination of Incident Awareness and Assessment imagery. For DoD intelligence components, CJCS DSCA Execute Order, paragraph 3.C.2.I, directs that, “IAA [incident awareness and assessment] must be conducted IAW [in accordance with] all intelligence oversight requirements including [DoD 5240-1-R, Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons].” The retention of Incident Awareness and Assessment imagery collected under this authority is limited. Imagery must be purged from intelligence databases and files after DSCA operations are complete. Justified requests to retain Incident Awareness and Assessment products in exception to the above guidance must be routed for legal review and must clearly explain why the products must be retained.

The CJCS DSCA Execute Order, paragraph 3.C.2.I, authorizes “traditional intelligence capabilities to conduct DSCA missions for non-intelligence purposes.” CJCS DSCA Execute Order 071415Z Jun 13, paragraph 3.I.10.B., permits the Combatant Commander to utilize manned aerial imagery assets (does not distinguish between DoD Intelligence Community and non- DoD Intelligence Community assets) within the Area of Responsibility (Civil Air Patrol as a volunteer civilian auxiliary of the Air Force aircraft, the Incident Awareness and Assessment aircraft sourced under paragraph 3.C.2.I, or aircraft transiting the Area of Operation to image geography only (not to observe human activity) without need for further SecDef approval. Use and dissemination of imagery collected under this authority is determined by the Combatant Commander.

As noted, the requirement for a review for proper use of domestic imagery is separate from the authorities to collect domestic imagery. When a Mission Assignment or Request For Assistance is received from the Lead Federal Agency by NORTHCOM for imagery and Incident Awareness and Assessment capabilities, the Lead Federal Agency pays for that imagery support under the Stafford Act. However, when the Combatant Commander decides to collect domestic imagery without an Mission Assignment or Request For Assistance from the Lead Federal Agency under other authorities [CJCS DSCA Execute Order 071415Z Jun 13, paragraph 1.H

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(Civil Air Patrol as a volunteer civilian auxiliary of the Air Force); paragraph 3.C.2.I (one Incident Awareness and Assessment capable AC - usually P-3 or P-8); or paragraph 3.I.10.B (manned aerial assets within the Area of Operation), for the Combatant Commander's situational awareness and DSCA planning], NORTHCOM must fully fund the domestic imagery collection, processing and production.

Conclusion: Yes. Under DoDD 5200.27, the National Guard in their State Active Duty or T-32 status, and or T-10 forces, may use Incident Awareness and Assessment and or Domestic Imagery assets during a DSCA response effort. However, before such assets are used, T-10 forces must send a Proper Use Memorandum to NORTHCOM for approval. National Guard personnel in their State Active Duty or T-32 status must send a Proper Use Memorandum to the National Guard Bureau J2.

F.2—Unmanned Aircraft System Usage

Issue: May the DoD use unmanned aircraft systems (UAS) for Domestic Imagery or Incident Awareness and Assessment when providing support to civil authorities after declaration of a major disaster? What about the National Guard?

Authority(ies): DepSecDef Policy Memo 15-002; DoDD 3025.18 (DSCA); Chief of the National Guard Bureau Instruction 7500.00 (Domestic use of National Guard Unmanned Aircraft Systems)

Discussion: Under the authorities listed, SecDef approval is required for the use of Unmanned Aircraft Systems for Incident Awareness and Assessment during disaster relief. Requests to SecDef also require a concept of operations (CONOPs) and a certificate of authorization (COA) from the Federal aviation administration (FAA). DepSecDef Policy Memorandum 15-002 allows for one exception and that is for the use of UAS in support of SAR with NORTHCOM approval and a FAA COA. These specific SAR missions must involve distress and potential loss of life and be coordinated by the Air Force Rescue Coordination Center (AFRCC), Alaska Rescue Coordination Center (AKRCC), or Joint Rescue Coordination Center (JRCC)-Pacific. "Specifically, the following commanders may approve the use of DoD UAS on an AFRCC/AKRCC/JRCC-Pacific coordinated mission with a properly issued SAR mission number after a determination that UAS would be the best platform to assist in the SAR mission and that its use would not interfere with the primary military duties of the unit concerned:

- Commander, U.S. Northern Command, through the Commander, Air Forces Northern, in the delegated role of Inland SAR Operations Coordinator for the continental United States Search and Rescue Region;
- Commander, U.S. Northern Command, through the Commander, Alaskan Command, as SAR Operations Coordinator for the Elmendorf Search and Rescue Region, landmass of Alaska; or
- Commander, U.S. Pacific Command, in the role of SAR Coordinator for the landmass of Hawaii, in close coordination with the U.S. Coast Guard."

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Public affairs use of Unmanned Aircraft Systems follows the same guidance; SecDef approval is required to fly a Unmanned Aircraft Systems for public affairs purposes (along with other requirements previously mentioned). Of note, armed DoD Unmanned Aircraft Systems may not be used in the United States for other than training, exercises, and testing purposes. DoD Unmanned Aircraft Systems may not be used for Federal, State, or local Immediate Response.

Similar restrictions exist for members of the National Guard in that, “Unless permitted by law and approved by the Secretary of Defense (SecDef), NG personnel using UAS for domestic operations may not conduct surveillance on U.S. persons. This restriction includes using any domestic UAS as part of an authorized DoD response to a lawful request from another Federal department or agency.” (CNGBI 7500.00, para. 4.a) Further, “all information acquired, retained, and disseminated during domestic Army National Guard (ARNG) and Air National Guard (ANG) UAS employment will be IAW guidance from the Chief of the National Guard Bureau (CNGB) and DoD.” (CNGBI 7500.00, para. 4.b) More importantly, “UAS may not be used for Federal, State, or local Immediate Response.” (CNGBI 7500.00, para. 4.c)

The question has been asked, “But what if the NG personnel are in their SAD status? Seeing that they are State employees, doesn’t that status make them exempt from the necessity of receiving SecDef approval?” Chief of the National Guard Bureau Instruction 7500.00, paragraph 4 states, “SecDef approval is required for all domestic UAS operations unless specified in this instruction, law, or other guidance (including Homeland Defense, Defense Support of Civil Authorities, NG civil support, and Counterdrug operations and missions conducted by NG personnel in a State Active Duty or Title 32 status).” (CNGBI 7500.00, para. 4.f) Also, “Governors in States where UAS assets are fielded may not employ UAS without SecDef approval; however, Governors may consider UAS employment in their planning for disaster response activities.” (CNGBI 7500.00, para. 4.g)

Conclusion: Generally, DoD and National Guard personnel, regardless of status, may not use Unmanned Aircraft Systems for Domestic Imagery or Incident Awareness and Assessment when responding to a major disaster. However, for the DoD, there are certain exceptions provided in DepSecDef Policy Memo 15-002 and DoDD 3025.18. These strict guidelines must be observed and adhered to. (DepSecDef Policy Memo 15-002) Strict guidelines must also be followed by the National Guard operating Unmanned Aircraft Systems in their State Active Duty or Title 32 statuses. (Chief of the National Guard Bureau Instruction 7500.00, para 4)

PRACTICE TIP: During a disaster response within the several States, refrain from using the terms “intelligence, surveillance, and reconnaissance” (ISR) or “intelligence preparation of the battlefield” (IPB). The DoD and the National Guard are not gathering intelligence or performing recon, and there is no battlefield. The appropriate term is incident awareness and assessment (IAA).

F.3—Capture and Collection of Images by DoD

Issue: May DoD personnel capture and collect images of disaster victims?

Authority(ies): DoDD 5200.27 (Acquisition of Information Concerning Persons and Organizations Not Affiliated with DoD); AR 380-13 (Acquisition and Storage of Information Concerning non-Affiliated Persons and Organizations)

Discussion: During the Puerto Rico relief effort, Civil Affairs Information Support Element (CAISE) and combat camera (ComCam) units were assigned to support the Public Affairs Officer (PAO) team on the ground by not only disseminating emergency information to the affected populace, but also capturing imagery of ARNORTH, DoD and other military relief-based activities. The issue was that the subject targets of the imagery captured were all Non-DoD Affiliated Persons, and the effort, therefore, fell within the restrictions of DoDD 5200.27 and AR 380-13, both of which address the acquisition of information on non-DoD affiliated persons.

DoDD 5200.27 para. 3.1 states, “DoD policy 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 following DoD missions: “protection of DoD functions and property,” “personnel security,” and “operations related to civil disturbance.” (DoDD 5200.27, para 4) Paragraphs 2(a) and (b) of AR 380-13 state, “Department of the Army policy prohibits acquiring, reporting, processing or storing of information on persons or organizations not affiliated with the Department of Defense, except under those circumstances authorized in paragraphs 6 and 7 below when such information is essential to accomplish Department of Army missions. All information-gathering activities are subject to overall civilian control and general supervision by the Secretary or Under Secretary of the Army.” Paragraph 6 of AR 380-13 provides six exceptions to the general rule, none of which seem to align with the desire to collect images of disaster victims. Paragraph 7 of AR 380-13 governs operations related to civil disturbance. While a civil disturbance may occur during or after a major disaster, a Civil Disturbance Operation (CDO) during or after a major disaster that also requires DoD involvement is uncommon.

Conclusion: Generally, DoD personnel may not capture and collect images of disaster victims unless the capture and collection squarely falls within one of the strict exceptions outlined in DoDD 5200.27 and AR 380-13. (Domestic Imagery or Incident Awareness and Assessment issue discussed in section F.1)

Issue: May DoD personnel use video feed to monitor the military staging area for force protection purposes?

Authority(ies): DoDD 5200.27 (Acquisition of Information Concerning Persons and Organizations Not Affiliated with DoD)

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Discussion: Paragraph 4.1 of DoDD 5200.27 grants DoD personnel the authority to acquire information related to protection of DoD property/equipment. Check to determine whether the video feed has the resolution capability to capture identifiable information of persons. The key here is to ensure that the view is of the area where the government property is exclusively located so that, if the video captures identifiable information of persons, then the capture is within the constraints of DoD policy. (Appendices G and M)

Conclusion: Yes. DoD personnel may use video feed to acquire information related to protection of DoD property/equipment.

F.4—Combatant Commander’s Authority to Collect Domestic Imagery

Issue: May the Commander, U.S. Northern Command collect domestic imagery of geography without a mission assignment or Request For Assistance from a lead federal agency?

Authority(ies): CJCS DSCA Execute Order 071415Z Jun 13, paragraph 1.H (CAP AF AUX), paragraph 3.C.2.I (one IAA capable AC - usually P-3 or P-8), paragraph 3.I.10.B (manned aerial assets within the AOR)

Discussion: The review requirement for proper use of domestic imagery is distinct from the authorities to collect domestic imagery. When U.S. Northern Command receives a mission assignment or Request For Assistance from a lead federal agency, and that assignment or request is for imagery and incident awareness and assessment capabilities, the lead federal agency funds the assignment under the Stafford Act. The Commander, U.S. Northern Command may exercise other than the Stafford Act to accomplish the same objective independent of a mission assignment or Request For Assistance from a lead federal agency. The specific authority can be found in paragraphs 1.H, 3.C.2.I, and 3.I.10.B of the CJCS DSCA EXORD.

Dissemination of the domestic imagery or information outside U.S. Northern Command and its components can become problematic in the analysis of dissemination authorities. When the Combatant Commander utilizes CJCS DSCA EXORD, paragraph 3.I.10.B authority to collect domestic imagery of geography, the primary intended purpose is to gain situational awareness of changes that may adversely affect logistics for disaster support if requested. The observations include changes in terrain, roads, and bridges. Utilization of paragraph 3.I.10.B authority, incidentally provides the Combatant Commander with situational awareness of matters such as damage, flooding, bridge and highway obstructions, as well as movement and locations of groups of people who may require search and rescue assistance.

Conclusion: Yes. The Commander, U.S. Northern Command may collect domestic imagery of geography without a mission assignment or Request For Assistance from a lead federal agency. Due diligence must be exercised to ensure that the scope and purpose of the domestic imagery collection stays within the scope of paragraphs 1.H, 3.C.2.I, and 3.I.10.B of the CJCS DSCA Execute Order. Otherwise, the original intended purpose of the domestic imagery collection,

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situational awareness for the Combatant Commander, may have the appearance of support of the lead federal agency without a Request For Assistance or mission assignment.

G. USE OF GOVERNMENT PROPERTY

G.1—Use of a National Guard Armory to Support Disaster Response Efforts

Issue: May a National Guard Armory be used to support their Immediate Response to a major disaster or emergency?

Authority(ies): DoDD 3025.18 (DSCA); Chief of the National Guard Bureau Instruction (CGNBI) 3000.04 (National Guard Bureau Domestic Operations); AR 140-483 (Army Reserve Land and Facilities Management)

Discussion: Under DoDD 3025.18, a commander is authorized to use Immediate Response Authority in response to a Request For Assistance from a civil authority. (para. 1.e) More specifically, “in response to a [R]equest [F]or [A]ssistance from a civil authority, under imminently serious conditions and if time does not permit approval from a 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.” (para 4.i)

The policy also recognizes the authority of State officials “to direct a state Immediate Response using National Guard personnel under their control” (para 4.j) Depending on the agreement that the supported State has with the Federal government and or the National Guard of that State or territory, an armory used by the National Guard constitutes a resource under the control of the local commander. As such, subject to meeting the required conditions, the local commander may use of their armory under their Immediate Response Authority.

Such a use was necessary in Puerto Rico and the U.S. Virgin Islands where local citizens needed to use the armories as safe havens. Lastly, CNGBI 3000.04 enclosure A states, that the CNGB will “Coordinate with Federal agencies, States, and Combatant Commands for use of NG elements and resources for domestic operations including Defense Support of Civil Authorities (DSCA), NG Civil Support (NGCS), Homeland Defense (HD), and Homeland Security (HLS).”

Conclusion: Yes. Under DoDD 3025.18 and CNGBI 3000.04, a local commander who controls a National Guard Armory may use the armory to support their Immediate Response to a major disaster or emergency.

Note that Immediate Response Authority is not the proper authority to cite when attempting to use armories or reserve centers as shelters. Instead, start with AR 140-483, para. 5-14(1)(1), “Army Reserve facilities may be used during natural disasters to help the local community during relief operations.”

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G.2—DoD Logistics Support to the National Guard

Issue: May the DoD provide support to a National Guard unit by exercising a Memorandum of Agreement? If so, does the status of the National Guard unit have an effect on the support provided by the DoD?

Authority(ies): 10 U.S.C. § 2679 (Installation-Support Services: Intergovernmental Support Agreements); DoDI 4000.19 (Support Agreements)

Discussion: Under 10 U.S.C. § 2679, a component of the DoD may enter into a Memorandum of Agreement with a State or local government to provide supplies, services, or resources. The DoD component must already be providing the supplies, services, or resources requested. However, the services provided may not include “security guard or fire-fighting functions.” Lastly, the supporting agency may be reimbursed for the support provided.

Also, in accordance with DoDI 4000.19, Encl. 3, a DoD component may enter into a support agreement with “a [S]tate or local government for support of the National Guard in accordance with Title 32 [of the United States Code.]” Because the DoD component seeks reimbursement in this case, the type of agreement entered must be a Memorandum of Agreement (MOA) versus a Memorandum of Understanding (MOU). In paragraph 2.b.2, the policy goes on further to state that, “Support agreement approval authority is the DoD Component commander, commanding officer, or director. DoD Components may delegate this function in accordance with the concerned Component’s policy.”

Conclusion: Yes. 10 U.S.C. § 2679 and DoDI 4000.19 authorize the DoD to provide reimbursable support to a National Guard unit through a Memorandum of Agreement if, 1) The DoD component already provides the supplies, services, or resources requested; 2) The services provided do not include security guard or fire-fighting functions; 3) The service is provided to a National Guard unit in its T-32 status versus State Active Duty (SAD) or T-10 status; and 4) The terms and responsibilities of the agreement are documented using a Memorandum of Agreement.

PRACTICE TIP: A similar situation may arise with the Logistics Civil Augmentation Program. As one of the many civil augmentation programs within the Services, the Logistics Civil Augmentation Program is an external support contract administered under the Army Logistics Civil Augmentation Program. (JP 4-10, Operational Contract Support) In a disaster response, if FEMA has already paid for equipment and bedding to be used in a base camp and there are vacant beds, check with the FEMA attorney to determine whether the beds are only for Federal personnel or whether they are for National Guard personnel as well. When National Guard personnel are responding under Emergency Management Assistance Compact, they most often serve in their State Active Duty status. While service-member sustainment is a matter for commanders to decide, lack of sustainment for members of the National Guard could lead to state lawsuits. The same is not the case for members of the active component.

G.3—Non-DoD Federal Employee Usage of the Commissary

Issue: May non-DoD Federal employees serving in the U.S. Territories and Possessions (including their dependents) use the Federal commissaries and exchanges in emergency situations?

Authority(ies): 41 C.F.R. § 302-2.12; 41 C.F.R. § 302-3.209; Under Secretary of Defense for Personal and Readiness Policy Memorandum dated 7 May 2008, “Commissary and Exchange Access by Department of Defense (DoD) Civilian employees, U.S. Government Contractor employees and non-DoD U.S. Federal Government Employees Assigned to U.S. Territories and Possessions”; DoDI 1330.17 (DoD Commissary Program); DoDI 1330.21 (Armed Services Exchange Regulations); Memorandum from U.S. Department of Justice, Drug Enforcement Administration, to CDR USNORTHCOM, dated 24 Aug 17; Memorandum from U.S. District Court, District of Puerto Rico, U.S. Probation and Pretrial Office, to DCDR USNORTHCOM, undated; Under Secretary of Defense for Personal and Readiness Policy Memo, SUBJECT: Commissary and Exchange Access by Department of Defense (DoD) Civilian Employees, U.S. Government Contractor Employees and non- DoD U.S. Federal Government Employees Assigned to U.S. Territories and Possessions, dated 7 May 2008

Discussion: Under DoDI 1330.17, non-DoD Federal employees serving in the U.S. Territories and Possessions (including their dependents) are barred from usage of the Federal commissaries and exchanges. However, in emergency situations, “Commanders of an overseas geographic combatant command (CCDR) may grant temporary access to commissary locations overseas and outside U.S. territories and possessions to U.S. Government employees assigned to duties in an overseas location (including non-appropriated fund civilian employees) and non-host nation military and civilian personnel providing direct support to humanitarian relief efforts for the duration of disaster relief operations.” In the case of the U.S. Virgin Islands and Puerto Rico, while they are U.S. Territories, they are also considered “overseas” under the policy. For the U.S. Virgin Islands and Puerto Rico, the impacts of Hurricanes Irma and Maria were declared major disasters, which also makes them emergency situations for purposes of the policy. As such, CCDR USNORTHCOM had the authority to grant non-DoD Federal employees, and their dependents, temporary access to Federal commissaries and exchanges.

Also, paragraph 5.p, Enclosure 2, of DoDI 1330.17, Combatant Commanders may authorize a deviation from the policy to permit Non-DoD U.S. Federal employees serving in the U.S. territories and possessions provided the following criteria are met: “(1) The employee is serving under a service agreement as defined by Title 41, C.F.R. § 302-2.12, or a tour renewal agreement IAW Title 41 C.F.R. § 302-3.209; (2) Granting access will alleviate individual hardship due to extraordinarily difficult living conditions, excessive physical hardship, or notably unhealthful conditions; and (3) Granting access will fit into and support a web of security precautions essential to ensure the safety and security of the individual employee who is subject to current and specific threat conditions, such as hostile or imminent danger.” The policy goes on to state that, “Deviations will not be granted for a period of more than 2 years. Delegation of this authority outside the Military Department Secretariat or Combatant Command headquarters concerned is prohibited.”

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Conclusion: Yes. Under DoDI 1330.17, Combatant Commanders have the authority to grant non-DoD Federal employees, and their dependents, temporary access to Federal commissaries and exchanges while serving in the U.S. territories and possessions.

G.4—Governor Transportation on DoD Platforms

Issue: May a Governor fly on a C-17, or any other DoD aircraft, from CONUS to the U.S. Virgin Islands and Puerto Rico?

Authority(ies): DoDI 4515.13 (Air Transportation Eligibility); 32 U.S.C. § 502(f)(1)(B)

Discussion: Under DoDI 4515.13, a Governor, in the instant case, may travel using a DoD aircraft under one of three scenarios:

The Emergency Management Assistance Compact can specify either T32 or State Active Duty for the status of the military members supporting (aircrew) and cost to reimburse is \$0.00. Under DoDI 4515.13, the Governor and The Adjutant General (TAG) are approved travelers. According to paragraph 3.6.u, entitled, Other Individuals Not Affiliated with the DoD, “Individuals who are not otherwise eligible for transportation in accordance with this section may be authorized space-required transportation in the following circumstances: . . . (10) State National Guard Officials—When travel is for official duty connected with National Guard activities, travel may be in and between the CONUS, Puerto Rico, Guam, U.S. Virgin Islands, or the States of Alaska and Hawaii only. Officials may include the State governors, lieutenant governors, adjutants general, and assistant adjutants general for such travel.” If T-32 aircrew are authorized under the Emergency Management Assistance Compact, then the answer is simply yes, and the T-32 mission is executed. If the cost for the C-17’s was captured, the supported State/territory, Puerto Rico in this instance, is to pay the cost share of 75%. DoDI 4515.13, Section 3, also allows the Governor to travel on the platform. Because the DoDI already authorizes the Governor’s travel, no additional approval is needed so long as all requirements listed within the policy are met.

The active component (T-10) has the ability in DoDI 4515.13 to move equipment such as “[p]assengers, cargo, and human remains airlift requirements necessary to execute the responsibilities in Title 10, U.S.C. This includes White House Support Missions, foreign nationals, and other Federal executive, judicial, or legislative departments or agencies and non-governmental directed missions not otherwise addressed in DoDD 4500.56, DoDI 4500.57, or this issuance. Transportation to support drug law enforcement activities from funded DoD counter-drug appropriations; transportation in support of foreign and U.S. disaster relief and humanitarian assistance activities; transportation to support responses to civil emergencies; hostage repatriation; and support to civilian law enforcement agencies.” (table 4) The language for cargo is a little less straightforward. Title 10 missions may support disasters as “at-will” and or “already-scheduled” missions. For Air National Guard missions, the support is allowed on

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“already-scheduled” missions. Approval Authorities are the Secretary of Defense, Deputy Secretary of Defense or Department of Defense Executive Secretary.

Under 32 U.S.C. § 502(f)(1)(B), to allow a Governor to travel on a DoD aircraft, a preposition move with the training nexus may be executed.

Conclusion: Yes. A Governor may fly on a DoD aircraft if traveling 1) pursuant to the Emergency Management Assistance Compact; 2) with a T-10 unit under an “at-will” or “already-assigned” mission; or 3) pursuant to a preposition move with the training nexus under 32 U.S.C. § 502(f)(1)(B). Flying the aircraft for humanitarian assistance may also be authorized under DoDI 4515.13, but note that the training mission must have been previously scheduled if using NG assets.

G.5—National Guard Personnel Travel on MilAir

Issue: In what status may National Guard personnel travel to the U.S. Virgin Islands when on official business if by military aircraft (MilAir)? Can military aircraft transport members of the National Guard in their State Active Duty status when the members are responding to a major disaster? May Active Guard Reserve (AGR) operate outside the continental United States (OCONUS) in T-32 status with only a travel order? Is the U.S. Virgin Islands considered OCONUS?

Authority(ies): DoDI 4515.13 (Air Transportation Eligibility); DoDD 4500.56 (DoD Policy on the use of Government Aircraft and Air Travel); The Joint Travel Regulation (JTR); NG PAM 95-5 (Use of National Guard Aircraft); Chief of the National Guard Bureau Instruction 1002.01 (Official Military Travel outside U.S. Areas)

Discussion: Territories and possessions of the US specifically includes the U.S. Virgin Islands (excluding the former Trust Territories of the Pacific Islands, which are foreign areas for JTR purposes). (JTR Appendix A, pg A-29, A-45, version dated 09/01/17) NG PAM 95-5, para. 4-1, requires ARNG members to be on T-10 orders “when on land outside the U.S., its territories, or possessions.” The phrase “on land” means that ARNG personnel may fly to or from Alaska, Hawaii, Guam, Puerto Rico, or the U.S. Virgin Islands in their T-32 status so long as they do not land in non-U.S. territory. Chief of the National Guard Bureau Instruction 1002.01, paragraph 4.a.1, reiterates the same and states, “N[atational] G[uard] military personnel can travel on official business between U.S. areas in Title 32 duty status only if they do not land on foreign territory while transitioning between U.S. areas. IAW [in accordance with] this policy, NG members may travel to or between Alaska, Hawaii, Guam, Puerto Rico, or the U.S. Virgin Islands in a Title 32 duty status, but may not transit any point not in a U.S. area while traveling between U.S. areas.”

DoDD 4500.56 establishes policies for the transportation of DoD passengers and cargo and the use of government aircraft. “Every effort shall be made to minimize travel costs.” Para 4(f) requires reimbursement through the Economy Act for “transportation for other executive agencies of the Federal Government.” DoDI 4515.13 implements DoDD 4500.56 and is the policy on air transportation eligibility for the DoD. DoDI 4515.13, para. 1.3.j reiterates

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Economy Act reimbursement for transportation provided to other executive agencies of the U.S. Government (USG). In accordance with Air National Guard Instruction 10-201, 1.4.1, “[t]he DoD is prohibited by law from providing airlift for any non-DoD activity unless it is: (1) of an immediate emergency/lifesaving nature, (2) in direct support of the DoD mission, (3) specifically authorized by statute, or (4) it is requested by the head of an executive agency of the Federal government.” Paragraph 1.4.1.1. of the policy states, “[t]he Assistant Deputy Under Secretary of Defense for Transportation Policy (ADUSD/TP) is the approving authority for transportation requests pursuant to the Economy Act.”

Members of the Active Guard Reserve may operate in T-32 status with a Travel Order in U.S. Virgin Islands because, even though the U.S. Virgin Islands is considered OCONUS, it is also considered non-foreign OCONUS area. The Joint Travel Regulations defines OCONUS as “locations outside the continental U.S. (CONUS).” The Joint Travel Regulations defines CONUS as, “The 48 contiguous States and the District of Columbia. This definition specifically excludes the [S]tates of AK and HI as they are not part of the contiguous States and are included in the definition of Non-Foreign, OCONUS locations.” The Joint Travel Regulations defines Non-foreign OCONUS Area as, “The [S]tates of AK and HI, the Commonwealths of Puerto Rico and the Northern Mariana Islands, Guam, the U.S. Virgin Islands, and U.S. territories and possessions (excluding the former Trust Territories of the Pacific Islands, which are foreign areas for JTR purposes).”

Conclusion: When traveling to the U.S. Virgin Islands via military aircraft on official business, members of the National Guard may be in their T-32 status so long as they do not land in non-U.S territory. They may also travel on military aircraft in their State Active Duty status as well however, the travel must be “(1) of an immediate emergency/lifesaving nature, (2) in direct support of the DoD mission, (3) specifically authorized by statute, or (4) it is requested by the head of an executive agency of the Federal government.” Lastly, members of the National Guard may operate in the U.S. Virgin Islands under their approved travel orders because, even though the U.S. Virgin Islands is considered OCONUS, it is also considered non-foreign OCONUS area.

G.6—Reporter Transportation on MilAir

Issue: Is a reporter an eligible passenger aboard MilAir if the travel is at the request of the PAO?

Authority(ies): DoDI 4515.13 (Air Transportation Eligibility); DoDD 4500.56 (DoD Policy on the use of Government Aircraft and Air Travel); DoDI 5122.08 (Use of DoD Transportation Assets for Public Affairs Purposes); The Joint Travel Regulation (JTR); CJCS DSCA Execute Order 071415Z Jun 13

Discussion: Under DoDI 4515.13, paragraph 8.2.c, “Unless [the Assistant to the Secretary of Defense (Public Affairs)] ATSD(PA) approval is required per DoDI 5122.08, the Offices of Public Affairs for each Military Department and the Office of Information, Department of the

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Navy, are authorized to monitor, control, and approve public affairs transportation by their respective units for the following: . . . (2) Representatives of information media individually or in groups in connection with assignments to cover military events, ... or military operations.”

Under DoDI 5122.08, paragraph 3.b, “[u]nless specifically authorized to travel on a non-reimbursable basis pursuant to paragraph 3.c, media and individuals other than media involved in approved P[ublic] A[ffairs] activities (referred to in this instruction as “non-government personnel”) will be required to reimburse the DoD for travel at the prevailing commercial rate (i.e. full coach fare) available to the general public between the day the travel was planned and the day the travel occurred. The DoD Components will require agreement for reimbursement from passengers prior to providing transportation. Procedures for reimbursement are included in Enclosure 4 of DoDD 4500.09E (Reference (e)), and DoD 7000.14-R, Volumes 11A and 11B (Reference (f)).”

The policy goes on to state, “[n]on-reimbursable travel may be authorized for media and non-government personnel when:

- (1) All of the following conditions are met:
 - (a) Travel is determined to be primarily in the interest of the DoD;
 - (b) Commercial transportation is not available or is otherwise inadequate to fulfill mission objectives, or the individual is in immediate danger of loss of life, limb, or sight; and
 - (c) Travel on DoD transportation assets is on a space-available [(Space-A)], non-interference basis on previously scheduled flights to the maximum extent that is possible;OR
- (2) The transportation mission or asset is an integral part of the media coverage or is needed to accomplish a Public Affairs objective; OR
- (3) The safety and security of DoD-accredited news media movement would be unduly compromised when travelling without DoD assistance.” (para. 3.c)

Conclusion: Yes. Unless Assistant to the Secretary of Defense (Public Affairs) approval is required, a reporter is an eligible passenger aboard MilAir when requested by the Public Affairs Officer. Note that in accordance with DoDI 5122.08, the Assistant to the Secretary of Defense (Public Affairs) only approves requests for Public Affairs travel related to (1) Travel requested for Public Affairs purposes by other government agencies or foreign governments, and (2) Inter-theater media travel. (DoDI 5122.08, para. 4). Also, OPNAVINST 5720.2M, para. 3.b, authorizes the senior naval operational commander present to embark individuals in the public interest or for humanitarian reasons.

G.7—Space-A Flights Used by non-DoD Persons

Issue: Can Space-A flight be used by family members of drilling guardsmen (M-Day)? What about for non-DoD relief workers?

Authority(ies): DoDI 4515.13 (Air Transportation Eligibility); The Joint Travel Regulation; CJCS DSCA EXORD 071415Z Jun 13

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Discussion: Under DoDI 4515.13, unless an exception applies, dependents of military members may travel space-available only when accompanied by the sponsor. (DoDI 4515.13, sec. 4.9) For an exceptions, see Section 3 of DoDI 4515.13. Unaccompanied dependent travel not otherwise covered under DoDI 4515.13 must be approved by the Chief of the National Guard Bureau (CNGB) in accordance with the exception to policy requirements set forth in section 12.2 of DoDI 4515.13 which provides the following, “All requests must include: a. Purpose for the transportation being requested. b. Justification explaining why the transportation is in the best interest of the DoD or of the DoD Component concerned . . . c. 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. d. The estimated cost of DoD airlift by aircraft type. e. A statement that the requested transportation is on a space-required 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. . . . (2) If the transportation is to be provided on a non-reimbursable basis to the organization or individual, the request must include a justification explaining why the transportation will not be reimbursed.”

For Space-Available flights, DoDI 4515.13, Sec. 12.2 provides that travel on a noninterference basis may be approved by CNGB subject to a finding that the transportation is in the best interest of the NG. However, approval of this request may result in opening the utilized DoD aircraft to additional eligible space-available travelers at the point of departure which may also result in the evacuation of numerous individuals on a much larger scale than expected and could lead to additional issues associated with a larger scale space-available movement of additional travelers.

For Space-Required flights, providing space-required transportation to the M-Day family members requires an authorized evacuation from a competent authority. The Joint Travel Regulations indicates an evacuation must be caused by unusual/emergency circumstances, which include, among other things, natural disasters. (Joint Travel Regulations , chap. 6, part A) An evacuation applies to a dependent who permanently resides at a member's former Permanent Duty Station vicinity following the member's assignment elsewhere if the dependent's departure is authorized/ordered by competent authority from the Permanent Duty Station vicinity at which the dependent permanently resides and the dependent actually moves to an authorized safe haven designated by that authority. (Joint Travel Regulations , chap. 6, part A)

The Chairman of the Joint Chiefs of Staff (CJCS) Defense Support of Civil Authorities (DSCA) Execute Order (EXORD) dated 071415Z Jun 13, para 4.A.3, provides, “non-DoD personnel and equipment are authorized on DoD aircraft during DSCA operations with an approved R[equest] F[or] A[ssistance].” The DSCA EXORD contemplates that other Primary Agencies will issue Requests for Assistance for DoD to support these emergency airlift operations. With concurrence from FEMA, Mission Assignments (e.g., 4339DR-PR-DOD-05) could be leveraged to support this activity.

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Under Chapter 12 of DoDI 4515.13, Combatant Commanders (CCDR) or their designees may, after making the justifications and determinations required by paragraph 12.2 of that instruction, authorize transportation of passengers, cargo, and human remains necessary to execute the responsibilities of the CCDR concerned and in the interest of the DoD. (rule 18 in Table 4) Non-reimbursable travel may be approved only on a noninterference basis on previously-scheduled DoD aircraft. Unfortunately, such approvals are limited to a case-by-case basis only and will not be on a recurring basis. As a result, if this option is exercised, SecDef approval for a more general exception authorizing Space-A travel of non-DoD passengers evacuating should be pursued.

For Space-A and CCDR/SecDef exception listed above, diversion of Space-A flights for the convenience of the passengers is not authorized since “[n]o additional funds may be used or flight hours performed to provide transportation under the space-available travel program.” (DoDI 4515.13, para. 4.1) Thus, if authorized, non-DoD Space-A passengers will be responsible for making their own return or connecting flights.

In many instances during the response to Hurricanes Irma and Maria, DoD hurricane relief flights delivered cargo and passengers, then returned to the United States nearly empty. Many Puerto Rico National Guard members, in their State Active Duty status, worked long hours in support of relief efforts. The Adjutant General (TAG) of the Puerto Rico National Guard asked whether existing Space-A DoD airlift capacity could be utilized to transport Puerto Rico National Guard dependents to CONUS, without their sponsor, so the Puerto Rico National Guard members could remain in Puerto Rico and focus on relief efforts without concern for their families. FEMA requested similar support for other disaster relief workers. There are four options for making DoD airlift, active component or National Guard, available to assist with the such requests:

- (1) Operate under a valid mission assignment from FEMA.
- (2) Utilize existing DoDI Space-A authorities for a portion of the passengers.
- (3) Obtain approval from the affected Combatant Commander(s) (CCDRs).
- (4) Obtain approval from the appropriate waiver authority under DoDI 4515.13, Table 4.

Options (1) and (4) may be used for evacuation of all National Guard dependents regardless of whether the National Guard members are in Title 10, 32, or SAD status. Option (2) only allows for evacuation of National Guard dependents when the member is in a Title 10 or Title 32 Full-Time National Guard Duty (FTNGD) status for more than 29 days. Option (3) only allows for evacuation on aircraft assigned to the affected CCDR from whom authorization was received (e.g. CDR USNORTHCOM can authorize transport on aircraft under USNORTHCOM control).

Conclusion: It depends. For the family members of an M-Day service-member to travel using space-required transportation, 1) an emergency circumstance must be present; 2) an evacuation must have been authorized/ordered by competent authority; and 3) a safe haven must have been designated. Also, existing Space-A DoD airlift capacity may be utilized to transport

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dependents of NG members without their spouses, or other non-DoD relief workers, to CONUS so long as one of four options listed above are exercised.

PRACTICE TIP: Note that under an approved Mission Assignment for disaster evacuation, non-DoD personnel may be transported on DoD aircraft so long as the transportation occurs as prescribed DoDI 4515.13, DoDI 6000.11, and the CJCS DSCA Execute Order unless an exception is granted by SecDef. Also, the policy should be clear about not only who may be transported on board DoD aircraft but what may be transported as well (e.g. personal weapons, ammunition, and pets). At a minimum, the policy should outline 1) the number and type of pets that may be transported; and 2) whether firearms may or may not be transported and if so, whether such is allowable with or without ammunition. It is also advisable to translate the policy, and other material, for areas that may be fluent in other languages like Spanish.

G.8—Delivery of Donated Goods

Issue: May the National Guard airlift disaster relief supplies, donated by private citizens, in support of hurricane relief efforts?

Authority(ies): CNGBI 3000.04 (National Guard Bureau Domestic Operations); 42 U.S.C. § 5192(a)(1) (Federal Emergency Assistance); 42 U.S.C. § 5170(a) (Procedure for Declaration); 44 C.F.R. § 206.2(a)(18) (Federal Disaster Assistance); DoD Manual (DoDM) 3025.01, Volume 2 (DSCA Incident Response); ANGI 10–201 (Air Transportation); NG Pamphlet (PAM) 95–5 (Use of National Guard Aircraft)

Discussion: Under NGB policy, when performing disaster relief operations, the Governor/TAG is empowered to employ Army National Guard/Air National Guard aircraft (Federally procured) on State Active Duty, using State funds, and under the command of the Governor pursuant to State law. If State law permits, disaster relief operations on State Active Duty may include the transport of disaster relief supplies donated by private citizens. The use of Army National Guard aircraft is governed by the requirements of NG Pamphlet (PAM) 95–5, and Air National Guard aircraft are still governed by the requirements of Air National Guard Instruction 10–201.

The Stafford Act authorizes the President (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 (42 U.S.C. § 5192(a)(1)) as well as State and local response and recovery efforts for major disasters (42 U.S.C. § 5170(a)). This tasking authority, delegated to the FEMA Administrator, is carried out through a Mission Assignment. A Mission Assignment is a work order issued to a Federal agency directing completion by that Agency of a specific task and citing funding, other managerial controls and guidance (44 C.F.R. § 206.2(a)(18)).

In the case of the U.S. Virgin Islands and Puerto Rico, the POTUS declared Hurricane Maria a major disaster for both. (FEMA-4339-DR, dated 20 Sep 17 & FEMA-4340-DR, dated 20 Sep 17) Subsequently, FEMA issued Mission Assignments to the DoD to support response

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and recovery efforts for major disasters. Once FEMA approves a Mission Assignment to the DoD for the transport of disaster relief supplies donated by private citizens, then to involve the National Guard, the DoD would need to determine whether the NG airlift is the best sourcing solution for the Mission Assignment in accordance with DoDM 3025.01, Volume 2.

The transport of disaster relief supplies, donated by private citizens, by National Guard airlift on T-32 training orders could raise questions related to the appropriate use of Government resources and the extent to which the National Guard'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. Therefore, as it relates to T-32, transportation of the donations should be provided under T-32 operational support versus training. (Appendix N)

Section 6 of DoDI 4515.13 identifies ten categories of cargo that are eligible for transport on DoD aircraft. Transportation eligibility includes “[h]umanitarian cargo transported under the authority contained in Sections 402 and 2561 of Title 10, U.S.C. and similar programs.” Further, “[a]ll other cargo [is eligible] when authorized by the Secretary of Defense, or designee, or other approval authority in Section 12 of this issuance or DoDI 4500.57.” Note that “other approval authority” in Section 12 includes the Chief of the National Guard Bureau, or designee. The Chief of the National Guard Bureau may approve “other cargo” but only in accordance with the requirements set forth in Section 12.2 of DoDI 4515.13 and Table 4, Item 9 therein. Reimbursement may be required. (DoDI 4515.13, Section 11)

Conclusion: Yes. Provided specific authority exists, the National Guard may airlift disaster relief supplies, donated by private citizens, in support of hurricane relief efforts in a State Active Duty or T-32 operational support status. (Appendix N)

G.9—National Guard Use of Federal Equipment or Supplies

Issue: May National Guard personnel in a State Active Duty Status use Federally procured equipment or supplies?

Authority(ies): 32 U.S.C. § 702 (Issue of Supplies to State National Guard); 32 USC § 708 (Property and Fiscal Officers); DoDI 1225.06 (Equipping the Reserve Forces); DoDD 5105.77 (National Guard Bureau); AR 5-13 (Total Army Munitions Requirements and Prioritization Policy); AR 700-131 (Loan, Lease, and Donation of Army Material); AFI 23-119; NGR 500-5/ANGI10-208 (National Guard Law Enforcement Support and Mission Assurance Ops)

Discussion: Under 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 [ARNG] or Air National Guard [ANG] for field duty.” AR 700-131, paragraph 1-4.n, states, “State Adjutants General (ARNG) are responsible for approving loans and leases of ARNG equipment in accordance with the approval authority in table 2-1. The NGB is responsible for approving loan requests prior to submission to [major commands] MACOMs for Army

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equipment to be used by [S]tate NGB units.” Table 2-1 authorizes loan or lease of DoD equipment to civil authorities (State and local governments) so long as there is a loan or lease agreement in place along with the proper bonds and insurances. Further, “in emergency disaster relief cases, bonds and insurance will be provided within 5 days after receipt of the material.”

Under DoDD 5105.77, the primary authority for Federally supplied equipment rests with the Chief of the National Guard Bureau (CNGB). The CNGB exercises this authority through the United States Property and Fiscal Officers located in each State or territory.

Under NGR 500-5/Air National Guard Instruction 10-208, paragraph 5-5.c., Use of Equipment During State Active Duty Missions, “State Adjutants General have authority to use Federal property issued to the National Guard of their State during periods of civil disturbance and other emergency conditions declared by the governor. If required, States may coordinate directly with other States for temporary loan of Federal property required for a particular emergency response. United States Property and Fiscal Officers are responsible for making coordination including reimbursements and reporting.” (Appendix C) The regulation goes on to state, “The [S]tate is liable for reimbursement (or replenishment in kind) to the Federal Government through the USPFO when Federal property is used by National Guard personnel, serving in [S]tate active duty status, when ordered by the governor to respond to emergencies related to civil disturbances, natural disasters, or other incidents. Reimbursement or replenishment requirements include: (1) Repair parts expended in the objective area, other than for fair wear and tear. (2) Petroleum, oils, and lubricants expended for direct mission accomplishment. (3) Incremental costs attributed to direct mission support (4) Equipment reimbursement costs are specified in AR 700-131 for the use of Army National Guard equipment and in AFI 23-119 for use of Air National Guard equipment.” (para. 5-5.d)

Regarding ammunition AR 5-13, 2-1.t.4.a identifies “operational loads” 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 Explosive Ordnance Disposal (EOD), Special Reaction Team (SRT) operations, ceremonies, quarry operations, guard force missions, force protection, Special Forces, pre-deployment site surveys, and so on.” National Guard Regulation 500-5/Air National Guard Instruction 10-208, paragraph 5-6 states, “National Guard personnel providing law enforcement support will not possess or use non-issued or personally owned firearms or ammunition while in a Title 32 or Title 10 status. The only weapons authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status are Federally owned military weapons listed on the unit’s property books. The only ammunition authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status is ammunition issued through the military supply system.” (Appendix K)

Per AR 700-131, paragraph 4-2, “The Army may 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 USC 4655).”

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Conclusion: Yes, subject to certain requirements, National Guard personnel in a State Active Duty Status may use Federally procured equipment or supplies. Ultimate authority rests with the CNGB who enforces the authority through the United States Property and Fiscal Officers within the State.

G.10—USCG Transportation of Civilian Prisoners

Issue: May USCG aircraft and personnel be used to transport prisoners who needed to be relocated from a prison in the U.S. Virgin Islands?

Authority(ies): 14 U.S.C. § 141 (Cooperation With Other Agencies, States, Territories, and Political Subdivisions)

Discussion: Hurricane Irma severely damaged detention facilities in the U.S. Virgin Islands rendering them unsuitable to house prisoners. The U.S. Virgin Islands needed assistance moving a number of prisoners from these facilities to facilities located elsewhere in U.S. territory. The USCG detachment aboard USS KEARSARGE was asked to investigate the legal considerations resulting from the use of DoD or USCG aircraft to move these prisoners (actual convicted persons) to a suitable detention facility.

14 USC § 141 would have allowed the USCG to assist with this request. Under that statute the “USCG may, when so requested by proper authority, utilize its personnel and facilities to assist any... State, Territory, possession, or political subdivision thereof... to perform any activity for which such personnel and facilities are especially qualified.” The limit on USCG authority to assist other agencies is governed by the “especially qualified” standard.

To determine whether USCG personnel and/or facilities are especially qualified, the specific skill set, derived from its organic and statutorily authorized missions, that will be used to conduct the mission must be analyzed. USCG personnel are especially qualified to transport prisoners. C-130 aircraft are often used to transport detainees from Central America to locations throughout the U.S. for prosecution in federal courts. Federal agents, including Coast Guard Investigative Service agents, on those flights are responsible for the care and custody of the detainees during the transport. Thus, a C-130 with Coast Guard Investigative Service (CGIS) agents onboard would be a way by which the USCG could assist with this request.

However, it is unlikely that Coast Guard Investigative Service agents would have the authority to take custody and detain prisoners serving sentences issued by a judge of the U.S. Virgin Islands. Therefore, any transport conducted under § 141 authority would also require law enforcement officials from the U.S. Virgin Islands to be aboard the aircraft as well. These local law enforcement officials would be responsible for maintaining custody of the prisoners and Coast Guard Investigative Service agents would assist them during the transport.

In this situation however, 14 USC § 141 was not the best mechanism for achieving the desired result. Using the FEMA Mission Assignment process was the better way to address this need. First, the Mission Assignment process would allow the USCG to receive reimbursement

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for the money expended to complete the mission. Second, FEMA who has visibility on the totality of the response effort would be given the opportunity to select the appropriate agency to complete the mission and ensure unity of effort. USCG aviation assets were limited during the response and FEMA would be in a position to determine if this would be the best use of the asset.

Ultimately, a request by the U.S. Virgin Islands was made to FEMA. FEMA assigned a Mission Assignment to the DoD to conduct the transport. A USAF C-17 was used along with local law enforcement to complete the mission. No USCG assistance was required.

The use of DoD to complete this mission could have had Posse Comitatus Act implications. Under the Posse Comitatus Act and DoD regulations, DoD personnel cannot directly participate in law enforcement. This includes any support that is regulatory, proscriptive, or compulsory. Having DoD personnel take custody of prisoners would violate the DoD regulations. However, merely using a DoD aircraft for transport of prisoners under the control of proper local authorities did not violate the regulations. National Guard assets on State Active Duty (SAD) or in a Title 32 status would have been another viable option for this mission and would eliminate the Posse Comitatus Act concerns as the Posse Comitatus Act does not apply to the National Guard unless acting in a Title 10 status.

Conclusion: During a response effort, requests for assistance could arrive at a Federal agency through many different channels. When the response is being coordinated by FEMA after a Stafford Act disaster declaration, it is important to ensure that FEMA is aware of these requests to ensure unity of effort and proper asset utilization. The USCG had the authority and the means to assist with this request, however, FEMA made the determination that the request should be handled by a different agency. Additionally, prior to using 141 authority, the potential to receive reimbursement through a Mission Assignment should be considered.

G.11—USCG Transportation of non-USCG Personnel

Issue: What regulations govern the use of USCG aircraft to transport USCG and non-USCG personnel during a response?

Authority(ies): Commandant, United States Coast Guard Instruction (COMDTINST) M3710.1 (Air Operations Manual which contains the USCG Policy on use of aircraft); Office of Management and Budget Circular A-126 (Improving the Management and Use of Government Aircraft; 41 CFR §300-304; DHS Management Directive 0020.1 series (Aviation Management and Safety))

Discussion: During the response to each of the hurricanes, key USCG personnel needed to use USCG aircraft to conduct official business related to hurricane response efforts. Additionally, there were numerous requests to allow non-USCG personnel to travel onboard USCG aircraft. These requests came from multiple sources to include leadership from federal, state, and local agencies participating in response efforts. USCG lawyers were sometimes called upon to

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determine if a particular use of an aircraft complied with applicable laws and regulations.

USCG Policy on use of aircraft is contained in Air Operations Manual. The manual states:

Carrying passengers and cargo on Coast Guard aircraft is strictly regulated. Because of the cost of operating aircraft and the public scrutiny of passenger transportation, it is necessary to ensure passengers who ride on Coast Guard aircraft do so in the Government's interest and that it is the most cost-effective means.

The basic policy for transportation on Coast Guard aircraft is contained in OMB Circular A-126, Improving the Management and Use of Government Aircraft and 41 CFR §300-304. This policy is interpreted by DHS Management Directive (MD) 0020.1 (series), Aviation Management and Safety, which provides guidance for all aircraft operated within the Department of Homeland Security, including Coast Guard aircraft. Coast Guard-specific interpretation and policy are contained in Chapter 5 of this Manual.

In order to provide an opinion of whether a particular request is authorized or prohibited, Chapter 5 of the Air Operations Manual must be reviewed.

Chapter 5 describes four basic categories of aircraft use: (1) Mission Requirements Use, (2) Required Use, (3) Other Transportation for the Conduct of Official Business, and (4) NonOfficial Transportation. Many of the flights following a storm will fall into the Mission Requirements Use or Other Transportation for the Conduct of Official Business categories.

Mission Requirements Use entails the use of USCG aircraft to carry out official responsibilities as authorized or required by statute. Commanding Officers of USCG air stations and cutters with aircraft embarked or deployed have the authority to designate personnel or cargo aboard a USCG aircraft as mission essential. This authority can be delegated no lower than the operations officer. Most flights during storm response will fall into this category. Other government agency personnel may fly aboard a flight on an approved mission to cooperate with or in support of federal, state or local government agencies.

A key authority that allows non-USCG personnel to travel onboard USCG aircraft is contained in Chapter 5, Section D.3 of the Air Operations Manual. When a flight is scheduled to meet Mission Requirements, passengers and cargo may travel aboard on space-available basis when: (1) the aircraft is already scheduled for an official purpose, (2) transportation requirements are not exceeded (e.g. a larger aircraft is not required), and (3) the transportation results only in minor additional cost to the government.¹⁴ The Air Operations Manual then lists recurring categories of passengers who are authorized to fly under this authority. These categories include personnel belonging to federal, state, and local government, disaster relief personnel, and representatives of the media.

Flights that do not meet the Missions Requirements Use criteria will often fall under the Other Transportation for the Conduct of Official Business category. Official transportation of personnel or cargo for the conduct of DHS or USCG business that is not also Mission

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Requirements Use shall be authorized as the primary purpose of the flight only when such use is either cost effective or if no commercial airline or aircraft service, including charter, is reasonably available to effectively fulfill the transportation requirement. Flights originating outside the National Capitol Region require advanced approval, in writing, from the Area Commander.

D7 obtained approval in writing from the Atlanta Area Commander prior to the arrival of Hurricane Irma.¹⁵ This approval allowed the D7 Commander, the Sector Command Cadre, and D7 subject matter experts to use USCG aircraft to conduct official business related to the response effort for the duration of the response. This capability provided critical airlift capabilities to meet and engage with key leadership and ensure successful response efforts.

Conclusion: Commandant Instruction Manual M3710.1, the Air Operations Manual which contains the USCG Policy on use of aircraft, governs the use of USCG aircraft to transport USCG and non-USCG personnel during a response. During a hurricane response, key USCG personnel will often need to use USCG aircraft to conduct official business. Having advanced authorization to use aircraft in this manner from the appropriate approval authority will expedite this capability. Additionally, non-USCG personnel will make requests to fly aboard USCG aircraft. These requests will often be time sensitive and require legal review. USCG attorneys should be aware of the regulations governing the use of aircraft.

G.12—Approval Authority for a USN Facility as an Incident Support Base

Issue: Who is the approval authority for the use of a USN facility as an Incident Support Base?

Authority: CJCS DSCA EXORD 191905Z Aug 11 (section 4.B.1); OPNAVINST 3440.16E (Navy Defense Support of Civil Authorities Program)

Discussion: As FEMA began staging for Harvey relief operations, the Agency requested use of NAS Corpus Christi (Cabaniss) as an Incident Support Base for housing FEMA personnel and supplies. The issue with Incident Support Bases during relief operations was whether or not U.S. Fleet Forces Command could approve use of a base as an Incident Support Base. Note that a FEMA Mission Assignment is the first requirement. Per the CJCS DSCA EXORD (section 4.B.1), approval authority belonged to Combatant Commander NORTHCOM with Service Secretary concurrence. The Service Secretaries must approve, along with the Combatant Commander, to minimize any adverse effect on the installation commander's priority mission requirements.

OPNAVINST 3440.16E was cited as the reference which delegated the authority to approve the use of an installation as an Incident Support Base to the Commander of U.S. Fleet Forces Command. OPNAVINST 3440.16E, paragraph 6.a, designates U.S. Navy North (NAVNORTH)/ Commander of U.S. Fleet Forces Command the principle planning agent in CONUS, Alaska, Puerto Rico, and U.S. Virgin Islands for all Navy DSCA operations and gives operational control (OPCON) of region commanders in support of DSCA operations. As this was

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a Chief of Naval Operations instruction, it was still not clear whether it delegated the authority to authorize the use of an installation as an Incident Support Base. Missing was the delegation of authority from the Secretary of the Navy (SECNAV) to the CNO. The Office of the Chief of Naval Operations (OPNAV) was not aware of any delegation of authority from SECNAV to Chief of Naval Operation to authorize the use of our bases for Incident Support Bases. NAVNORTH coordinated with OPNAV and it was determined that the Deputy Assistant Secretary of the Navy for Energy, Installations, and Environmental held the Incident Support Base approval authority. After further coordination, this authority was delegated to the Office of the Chief of Naval Operations, Operations and Plans Division (OPNAV N31) for the purposes of Harvey relief and later for Irma as well.

Conclusion: The Deputy Assistant Secretary of the Navy for Energy, Installations, and Environmental holds Incident Support Base approval authority. This authority may be delegated. For Hurricanes Harvey and Irma, Deputy Assistant Secretary of the Navy for Energy, Installations, and Environmental delegated Incident Support Base approval authority to OPNAV N31.

G.13—Non-DoD Civilian Usage of Navy Lodging

Issue: May FEMA/non-DoD Civilian first responders use Navy Gateway Inns and Suites for lodging located on board a military installation?

Authority: Commander, Navy Installations Command (CNICINST) 11103.18 (Lodging Instruction)

Discussion: FEMA requested use of Navy Gateway Inns and Suites for first responders on the Incident Support Base. FEMA/civilians are not normally authorized patrons. However, table 2.1 of CNICINST 11103.18 (24 Sep 15), Enclosure (1), addresses guests of the Armed Forces as determined by a Commanding Officer. The instruction provides that a Commanding Officer may designate individuals or groups as “Guests of the Armed Forces” when extending lodging privileges is determined by the Commanding Officer to be in the best interests of the Department of the Navy (DoN) or DoD.

Conclusion: Yes. Under CNICINST 11103.18, a Commanding Officer has the authority to authorize non-DoD civilians to rent rooms at Navy Gateway Inns and Suites as guests of the Armed Forces.

G.14—Non-DoD Civilian Usage of the Navy Exchange

Issue: May FEMA/non-DoD Civilian first responders use the Navy Exchange to purchase food and supplies for personal use?

Authority: DoDI 1330.21 (Armed Services Exchange Regulations)

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Discussion: FEMA personnel utilizing a Navy base as an Incident Support Base /Responder Base Camp requested use of the Navy Exchange on base to purchase food and supplies for personal use. Armed Services Exchange Regulations are contained in DoDI 1330.21. There are fairly clear delineations for unlimited access, limited use, temporary personnel, etc. For exchanges, there are no specific exceptions for FEMA/non-DoD civilian personnel. Non-DoD agencies are allowed to purchase items from the exchange for agency use, but not for the use of individuals. Access is allowed for USG employees who “reside” on base. In the instance of the 2017 hurricane response, Commanding Officer, Naval Air Station Corpus Christi issued an emergency authorization that granted the FEMA personnel lodged on base with temporary use of the Exchange and the Commissary. If the stay on base was to be long-term, then a patronage deviation would have been sought under DoDI 1330.21, para. 6.5.3, which allows the secretaries of the military departments to “...grant deviations with regard to authorized patron privileges for individuals or classes/groups of persons at specific installations.” Patronage deviation requests are handled by the Assistant Secretary of the Navy, Manpower and Reserve Affairs [ASN (M&RA)] and may not be further delegated.

Conclusion: Yes. FEMA/non-DoD Civilian first responders may use the Navy Exchange to purchase food and supplies for personal use subject to the issuance of an emergency authorization by the Commanding Officer of the installation.

G.15—Non-DoD Doctor Usage of DoD Medical Tents

Issue: May non-DoD doctors utilize Area Support Medical Company tents to treat patients given storm damage to hospital?

Authority(ies): DoDI 6200.03 (Public Health Emergency Management Within the Department of Defense); DoDI 1100.21 (Voluntary Services in the DoD); 31 U.S.C. § 1342 (The Voluntary Services Statute)

Discussion: Army medical personnel on the ground in St. Thomas were asked by local doctors if they could provide medical care from the Area Support Medical Company tent hospital (as the hospital in St. Thomas was not mission capable, it had no power). There was a question of privileges necessary to practice in a DoD Medical Treatment Facility and who could grant these privileges.

Under DoDI 6200.03, enclosure 4, paragraph 3, the commander of a Medical Treatment Facility is allowed to supplement available staff with the use of volunteers. In addition, the Medical Treatment Facility commander may grant credentials and privileges to the volunteers, with appropriate documentation (the instruction contains some guidance on licensing documentation, but discretion is left to the Medical Treatment Facility official). The other issue was that US Virgin Island doctors wanted to bill patients for their services, this is not allowable when acting as volunteers for the DoD. Volunteers under this arrangement are considered employees of the DoD to the extent provided in DoDI 1100.21 (Voluntary Services in the DoD), and that instruction contains some additional procedures and guidance on documenting the

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relationship. Finally, all public health emergency privileges shall immediately terminate once the emergency has alleviated; however, the Medical Treatment Facility may choose to terminate these privileges prior to that time.

Conclusion: Yes. Under DoDI 6200.03, so long as local doctors possess the appropriate licenses and credentials, the Area Support Medical Company (Medical Treatment Facility) commander may grant the doctors authority to utilize Area Support Medical Company tents to treat patients. Further, as an exception to 31 U.S.C. § 1342, the doctors may only provide medical care as a volunteer service. However, while serving as a volunteer, the doctors are essentially DoD employees. As a result, the doctors may not bill the patients for treatment provided in the Medical Treatment Facility.

G.16—DoD Donation of Excess Medicine

Issue: May DoD donate excess medicine and other supplies to the local population?

Authority(ies): 10 U.S.C. § 2557 (Excess Nonlethal Supplies: Availability for Humanitarian Relief, Domestic Emergency Assistance, and Homeless Veterans Assistance)

Discussion: The USS OAK HILL had excess medicine and other supplies onboard and desired to donate the excess to the people of St. Thomas. The excess included medicine (antibiotics) due to expire 2-5 months after distribution, children’s Tylenol, and Motrin. Under 10 U.S.C. § 2557, the donated supplies must be “non-lethal” and purchased with DoD funds. The donation also requires a custody transfer between DoD/DLA and DHS/FEMA and there cannot be an outstanding request by another DoD entity for the same materials.

Conclusion: Yes. Under 10 U.S.C. § 2557, DoD may donate excess medicine and other supplies to the local population so long as the donated supplies are “non-lethal” and purchased with DoD funds.

G.17—Title 5 Personnel Eligibility for Space-Required Transportation on DoD Aircraft

Issue: Are Title 5 (T-5) personnel, specifically, civilian Wing Directors of Psychological Health, eligible for space-required transportation on DoD aircraft to the U.S. Virgin Islands? (note: This issue is not the same as the issue found in D.9 of this publication in that D.9 raises the issue of whether the T-5 Director of Psychological Health may travel TDY in support of the hurricane response effort, whereas the issue here is whether the person is eligible for space-required transportation on a DoD aircraft during the response effort.)

Authority(ies): DoDI 4515.13 (Air Transportation Eligibility); The Joint Travel Regulation

Discussion: Under current DoD policy, T-5 individuals must be traveling under official PCS, TDY, or TAD orders. DoD policy indicates that the following three categories of individuals are eligible for space-required transportation:

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“(1) Civilian employees of DoD Components traveling under official PCS, TDY, TAD orders or on rest and recuperation or FEML travel. (2) . . . (3) Civilian employees who have defaulted on their transportation agreement..., but only when commercial transportation is unavailable. Travel orders will require the employee to pay the transportation costs before travel at the USG non-DoD tariff rate. Such costs may be reimbursed in cash. (DoDI 4515.13 para. 3.6.b) (Note: In other words, if the individual has defaulted on their transportation agreement, then he/she is eligible but only when commercial air is unavailable – employee required to pay transportation costs before travel; proponent should ascertain whether each individual traveler is in default of his/her transportation agreement; if so, apply this guidance).

For civilian employees of other USG Agencies, see section 3.6(g) of the DoDI which states, “Employees... of Other USG Agencies are eligible for space-required transportation. Space-required transportation is chargeable: (1) To the sponsoring DoD Component at the USG DoD tariff rate for employees of other USG agencies when traveling for or in the interests of the DoD and when approved in accordance with Section 12 of this issuance.”

Conclusion: Yes. T-5 personnel are eligible for space-required transportation on DoD aircraft in accordance with DoDI 4515.13, sec. 3.6b, Civilian Employees of DoD Components.

G.18—Non-DoD and other service Aircrafts U.S. Navy Ships

Issue: Can U.S. Army, Air Force, USCG, and non-DoD civilian helicopters land on U.S. Navy (USN) ships?

Authority(ies): OPNAVINST 3100.8B, para 4.b.3 (Deck Landing Operations by Civilian helicopters with Civilian pilots on U.S. Navy Vessels); Naval Air Engineering Center-Engineering-7576 (NAEC-ENG-7576) (Shipboard Aviation Facilities Resume); Naval Air (NAVAIR) 00-80T-122 (governs operating procedures for ships and aircraft); NAVAIR 00-80T-106 [Aviation Assault Ships (governed by the general purpose amphibious assault ship (LHA)/multiple purpose amphibious assault ships (LHD) landing helicopter assault/landing helicopter Naval Air Training and Operating Procedures Standardization (LHA/LHD NATOPS)]

Discussion: As hurricane relief operations progressed, requests were made to embark civilian, US citizens on DoD aircraft for the purpose of evacuation from the U.S. Virgin Islands and Puerto Rico to the continental United States. U.S. ship flight decks are rated for all Army/AF/USCG helicopters. The question then becomes whether the crew is qualified to land on the United States Ship flight deck. In general, all USCG crews are qualified to land on United States Ship flight decks. In many cases, Army/AF crews may be qualified to land on United States Ship flight decks as well. It is not clear how many, if any, non-DoD flight crews (e.g., FEMA) are qualified to land on a United States Ship flight deck. However, in the event they are not qualified to land, the fleet commander may grant a waiver to allow non-qualified crews to land on United States Ship flight decks.

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For Hurricane Irma, the Commander of the U.S. Fleet Forces Command released a message (DTG 091800Z SEP 17), authorizing military (non-Navy) and civilian aircraft to land, shutdown, and refuel on board naval vessels – as this authority is with the U.S. Fleet Forces Commander. The Commander of the U.S. Fleet Forces Command also delegated to the Strike Group Commanders Expeditionary Strike Group-2 and Carrier Strike Group-10 (ESG-2 and CSG-10) the authority to approve flights for civilian personnel in aircraft under their respective control for DSCA.

Conclusion: Yes. Army/Air Force/USCG, and non-DoD civilian helicopters may land on USN ships. However, the landing also depends on 1) whether the platform is a civilian or DoD aircraft and 2) the qualifications of the crew flying the aircraft. Also, considerations included whether the flight decks were certified for each type of helicopter, and whether the crews were certified for shipboard landing. In this instance, the flight decks of the ships involved were certified for all Air Force, Army, and USCG helicopters as well as certain civilian helicopters flown by FEMA. If the crews are not certified to land on a Navy ship, the fleet commander may issue a waiver. Because the crews were not certified to land on a Navy ship, the NAVNORTH commander issued a waiver.

G.19—Approval Authority for Support Installation Designation

Issue: Who has the approval authority to designate an installation as a base support installation (also known as an installation support base)?

Authority(ies): Specific Delegation of Authority Issued from the Deputy Assistant Secretary of the Navy (Energy, Installations, and Environment) to the Office of the Chief of Naval Operations, Operations and Plans Division (no standing authority exists at this time)

Discussion: During the 2017 hurricane response, Office of the Chief of Naval Operations Instruction 3440.16E was cited by U.S. Navy North Command as the policy that delegates base support installation designation authority the Commander, United States Fleet Forces Command. In actuality, the instruction designates the Commander, US. Navy North Command or the Commander, United States Fleet Forces Command as the principle-planning agent in the continental United States, Alaska, Puerto Rico, and U.S. Virgin Islands for all Navy Defense Support of Civil Authorities operations. The instruction also assigns operational control of region commanders in support of Defense Support of Civil Authorities operations.

Because this is a Chief of Naval Operations instruction, base support installation designation authority is not specifically address. Missing from the instruction is a delegation of authority from Secretary of the Navy to the Chief of Naval Operations. Further, the Office of the Chief of Naval Operations was not aware of any delegation of base support installation designation authority from the Secretary of the Navy to the Chief of Naval Operations. As a result, U.S. Navy North Command coordinated with the Office of the Chief of Naval Operations where it was determined that the Deputy Assistant Secretary of the Navy (Energy, Installations, and Environment) held the authority to designate an installation as a base support installation.

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After further coordination, this authority was delegated to the Office of the Chief of Naval Operations, Operations and Plans Division, for the specific purposes of Hurricane Harvey relief operations. The same action was later taken for Hurricane Irma relief operations. There was no permanent delegation of authority of this nature from the Secretary of the navy to the Chief of Naval Operations.

Conclusion: The Deputy Assistant Secretary of the Navy (Energy, Installations, and Environment) has the approval authority to designate an installation as a base support installation. This authority may be delegated. At the time of this publication, specific delegation parameters were unknown. Tracing derivative authorities is critical to understanding the legal landscape. Each component should create a similar authorities matrix that captures the authorities available to each component command based on their various roles.

H: FISCAL LAW

H.1—Procurement of Bottled Water

Issue: May units purchase bottled water for usage during a hurricane response? What about individual purchases using their travel card?

Authority(ies): DoD Financial Management Regulation, vol. 10, ch. 12, para. 120304; AFI 65-601, vol. 1, para. 4.58; AR 30-22, para. 5-19 (Army Food Program)

Discussion: Under the DoD Financial Management Regulation and AFI 65-601, bottled water may be purchased where the public water is unsafe or unavailable. AR 30-22 goes further and discusses the need to obtain approval from HQDA prior to purchasing bottled water, except in the context of a deployment / contingency.

Overall, the agency must administratively determine that the best way to provide the water is by using bottled water. (Dept. of the Army – Use of Appropriations for Bottled Water, B-310502, Feb. 4, 2008, 2008 U.S. Comp. Gen. LEXIS 38; Dept. of the Army, Military Surface Deployment and Distribution Command – Use of Appropriations for Bottled Water, B- 318588, Sept. 29, 2009 (allowing purchase of bottled water for use at temporary work sites where potable water is not available) Also, the Financial Management Regulation, Volume 10, paragraph 120320, authorizes the use of appropriated funds for the procurement of special drinking water when it is necessary, from the government standpoint, in multiple situations to include when the public water is unsafe for human consumption.

In the case of the U.S. Virgin Islands, the Virgin Island National Guard, the “agency” was in the position to determine whether the water was unpotable and/or unsafe for human consumption. Upon receipt of such a determination, the State-NG United States Property and Fiscal Officer should rely on the aforementioned authorities to procure enough water to support the service-members working in support of the mission.

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As to individuals purchasing bottled water using their travel card and then seeking reimbursement in the Defense Travel System, such is not advised because not only is the procurement of bottled water normally a personal expense, but procuring bottled water using the travel card then seeking reimbursement via Defense Travel System is not covered in the Joint Travel Regulations nor the Government Travel Charge Card manual (<https://www.defensetravel.dod.mil/site/govtravelcard.cfm>).

Conclusion: Service-members are not advised to use their government travel cards to purchase bottled water and then later seek reimbursement via Defense Travel System because such an act is not covered by the Joint Travel Regulations nor the Government Travel Charge Card manual.

For members of the National Guard, always check matters similar to this one with the State's U.S. Property and Fiscal Officer. It is never safe to assume that the usage of appropriated funds to procure bottled water is authorized without checking with the U.S. Property and Fiscal Officer first. Even if an opinion of the Government Accountability Office provides that procurement is authorized, the opinion is not binding on the DoD. Instead, it is advisory. Further, the command may be more stringent, not less stringent than the law. What this means is that even if a Government Accountability Office opinion provides that using appropriated funds to procure bottled water is authorized in conditions that are exactly like the one(s) you are facing, your command can be more stringent and still bar the procurement. Again, check with the U.S. Property and Fiscal Officer before using appropriated funds to procure bottled water for any purpose.

H.2—First Responder Usage of USCG Procured Gasoline

Issue: May USCG owned gasoline be provided to USCG first responders to fill the tanks of their Personally Owned Vehicles?

Authority(ies): 43 U.S. Op Atty. Gen. 293, 302-303; 31 U.S.C. § 1342 (The Voluntary Services Statute)

Discussion: Because of the devastation caused by Hurricane Maria, there was, among many other issues, a fuel shortage. This fuel shortage presented problems for USCG Sector San Juan personnel. The lack of fuel on the island made it difficult, if not impossible for Sector personnel to fill their Personally Owned Vehicles and therefore jeopardized their ability to arrive for duty. Failure of Sector personnel to arrive for duty would limit the USCG ability to conduct operations, including hurricane Maria response efforts, as well as man the base to provide for sufficient protection and security for government property.

Eventually, a truck filled with 5,500 gallons of gasoline was delivered to Sector San Juan. This fuel was purchased by the USCG and was intended to be used to conduct USCG operations. The operational commander also sought to allow Sector personnel to fill their Personally Owned Vehicles with the gasoline so that they could get to and from work. Blanket approval to provide fuel to members for seven days was sought. USCG District-7 legal and the Office of General

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Law were asked to provide a legal opinion as to whether this use of the fuel was lawful. Using the analysis below, it was determined that providing fuel to essential personnel was authorized.

There is no authorization or appropriation for the Coast Guard to provide fuel to employees for their travel to and from work. Local travel at a member's permanent duty station is a personal expense that must be borne by the employee. However, underlying this lack of specific appropriation is the "Necessary Expense" doctrine. This doctrine allows the spending agency reasonable discretion to determine how to carry out the objectives of existing appropriations. [6 Comp. Gen. 619, 621 (1927)] There is no precise formula for what will qualify, but the expenditure must be more than merely desirable or important to the agency. [34 Comp. Gen. 599 (1955)]

The Comptroller General has upheld the use of appropriated funds for personal expenses in extreme emergencies. Cases in which this has been permitted seem to hinge on the unpredictable nature of the emergency (i.e. riot, blizzard or hurricane) that threatens the agency's ability to save lives or protect government property. When weather has been the driving force, inclement weather is not enough. Conditions must arise to a state of emergency where human life is in jeopardy.

The conditions in Puerto Rico post-Maria went far beyond inclement weather. Based on these conditions D7 legal and the office of maritime and international law concluded emergency conditions existed. Failure to provide the gasoline to employees would effectively shut down Coast Guard operations, which include the statutory mission of saving life and property as well as the duty to protect the Federal property at the Coast Guard base. As such, distribution of USCG owned gasoline to operationally necessary personnel was authorized.

However, given the nature of this exception to the appropriation law, a blanket approval for seven days might be too broad. The legal offices recommend the following:

- 1) Allow for the distribution of gasoline to operationally essential employees for 48 hours. After 48 hours, the approving official should re-certify that the conditions are still such that continuing to provide the fuel for another 48 hours is required to conduct Coast Guard operations. This permission should not be extended past 48 hours unless circumstances change. Furthermore, if it is determined earlier that the provision of gas is no longer necessary, then it should be suspended immediately.
- 2) Keep a detailed log of all fuel that is distributed. This is both to provide proof of our use if audited and to prevent any one individual from taking more gas than is necessary to conduct operations.
- 3) Quality control must be exercised over the gas that is distributed. Thus, only operationally essential personnel should be given gas. Those receiving gas must be informed that any personal use of the gas during the emergency circumstances must be limited to only bare necessities. Under this view, dependents should not be given gas

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unless it is determined that doing so is necessary to save life or property. To the extent possible, these determinations should be documented.

Conclusion: During extreme emergencies, where human life is in jeopardy, appropriated funds may be used for personal expenses. When emergency circumstances such as those faced by Sector San Juan personnel exist, USCG attorneys will be asked to quickly provide opinions on all manner of legal issues. Here, an in-depth knowledge of fiscal law by USCG attorneys provided the operational commander with the tools necessary to ensure that critical operations could continue. In addition to opining that the use of fuel as described was lawful, USCG attorneys also provided important recommendations on how to account for the fuel and when to reassess the necessity of continued distribution.

H.3—USN Portable Galley Used by Military Personnel on Per Diem

Issue: May the USN pay for a portable galley to feed personnel receiving temporary shelter on base, and are military personnel utilizing the portable galley required to pay for their meals?

Authority(ies): Navy Supply (NAVSUP) P-486 (Food Services Management)

Discussion: Navy Supply P-486 authorizes “situational feeding” which includes “emergency and disaster feeding.” Accounting procedures for disaster feeding is covered in the Expenditures and Accounting section of the policy. The Commander, Navy Region Southeast declared the aftermath of Hurricane Irma to be a disaster feeding situation, declaring that an emergency or disaster existed, and subsistence must be provided to personnel other than those normally authorized to be subsisted. Word was initially passed that military and DoD civilian personnel were not required to pay for their meals. In addition, Commander, Navy Region Southeast staff advised that those personnel on Commuted Rations could remain on Commuted Rations during disaster feeding (without paying for meals). In this case, Commander, Navy Region Southeast made the proper disaster declaration, but it was determined that meals should be paid for by all of those able to pay, or meals would be recorded for collection later. Commuted Rations were not affected, but those receiving them are required to pay for meals, either on the spot or later. In this case, power was completely out on the base, so no funds could be collected at the point of purchase.

Conclusion: Yes. NAVSUP P-486 authorizes “disaster feeding” of personnel (paid for by the Navy). However, military personnel receiving the meals are required to reimburse the Navy for the meals just as if they were served in a galley.

H.4—Economy Act Implications (USCG Food Request to the USN)

Issue: What are the Economy Act implications, if any, for a USCG request to the USN for 10 days of food supplies?

Authority(ies): 31 U.S.C. § 1535 (The Economy Act)

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Discussion: The Economy Act allows Federal agencies to share goods or services while also providing a mechanism for reimbursement. The head of an agency may place an order under the Economy Act if: (a) Amounts of the desired materials are available; (b) Procurement of the materials via the Economy Act is in the best interest of the USG; and, (c) The ordered goods or services cannot be provided by contract with a commercial entity as conveniently or cheaply. Payment to the providing agency must be made in advance or promptly after delivery.

Conclusion: The Economy Act authorizes Federal agencies to share goods or services and provides the mechanism for reimbursement.

I: STANDING RULES FOR THE USE OF FORCE (SRUF)

I.1—Weapons Carry for T-10 Personnel

Issue: May Federal military personnel (T-10) carry weapons while providing support to civil authorities?

Authority(ies): CJCS DSCA EXORD, para. 3.I; DoDD 5210.56 (Arming and the Use of Force); NORTHCOM DSCA EXORD, para. 3.L.15.A; CJCSI 3121.01B, encls N and L

Discussion: Per the CJCS DSCA EXORD, “forces with assigned weapons may deploy with weapons stored; however, weapons will not be carried during DSCA operations unless authorized by SecDef. The CCDRs will establish and control arming levels if the carrying of weapons has been authorized by SecDef. DoD personnel providing security for stored weapons and ammunition or classified material requiring armed security by separate DoD directive, [including DoDD 5210.56, Arming and the Use of Force] may carry their weapons while performing their normal security duties.” (para. 3.I.13.a)

There is an exception within the regulation that allows forces that carry weapons as part of their daily duties to continue to remain armed; however, they can be used only to protect the forces they are supporting (e.g., T10 convoys, medical personnel delivering supplies).

Units arriving in the Joint Operations Area have varying levels of experience in DSCA operations. For this reason, commanders must ensure that the personnel are properly trained and that the orders from Joint Staff or NORTHCOM are clear with respect to the arming of T-10 forces during a DSCA operation.

The same holds true for Field Ordering Officers or other T-10 personnel when performing DSCA within the several States (including the territories and possessions of the United States). A Field Ordering Officer can be armed with approval from the SecDef. SecDef approval is required before any T-10 forces may be armed during a DSCA event. (the DSCA EXORD) There are certain authorizations contained in DoDD 5210.56 for which the Field Ordering Officer does not qualify. Therefore, if someone like the Field Ordering Officer needs

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protection when performing DSCA, that protection may only be provided by someone who meets the requirements set forth in DoDD 5210.56.

Conclusion: It depends. Normally, Federal military personnel are not authorized to carry weapons during a DSCA operation. However, the authorities listed provide for a few narrow circumstances where such is permissible.

PRACTICE TIP: The Rules of Engagement do not apply in civil support operations within the several States. For National Guard judge advocates, review the home-State's Rules for the Use of Force (RUF) and ensure that it is up to date.

I.2—Search of Evacuees When Boarding Federal Aircraft

Issue: May Federal military forces assist Coast Guard Law Enforcement personnel as they search evacuees and their belongings prior to boarding a DoD aircraft?

Authority(ies): DoDI 3025.21, Defense Support of Law Enforcement Agencies; CJCS DSCA EXORD 071415Z Jun 13

Discussion: During Hurricane Harvey, the judge advocates for the Texas Air National Guard received a call from a deployed active component judge advocate. The active component judge advocate asked whether members of the Air Force Security Force could assist Coast Guard Law Enforcement as they searched the belongings of evacuees prior to boarding an Air Force C-130. "Unless specifically authorized by law, no DoD personnel in a Title 10, United States code (USC), status will become involved in direct civilian law enforcement activities, including, but not limited to , search, seizure, arrest, apprehension, stop and frisk, surveillance, pursuit, interrogation, investigation, evidence collection, security functions, traffic or crowd control, or similar activities, except in cases and under circumstances expressly authorized by the President, Constitution, or act of Congress. Unit commanders will ensure their Title 10 personnel are briefed on [DoDD 5210.56, Arming and the Use of Force; DoDI 3025.21, Defense Support of Law Enforcement Agencies; CJCSI 3121.01B, Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces] before they deploy." (CJCS DSCA EXORD 071415Z Jun 13, paragraph 3.I.9) Except as authorized in enclosures 3 and 4 of the policy, DoDI 3025.21 also prohibits T-10 personnel from providing search and seizure assistance to civilian law enforcement personnel. [DoDI 3025.21, Enclosure 3, para. 1.c(1)(b)] This instance does not involve civilian law enforcement personnel. Instead, the personnel performing the searches were U.S. Coast Guard and there are no facts presented that would lead one to reasonably believe that the U.S. Coast Guard personnel were overwhelmed, incapable, or inadequately performing the searches of the evacuees. Thus, in the absence of additional facts, there was no immediate need nor authorized reason for T-10 personnel to assist the U.S. Coast Guard personnel with the searches.

Enclosure 3, paragraph 1.d, of DoDI 3025.21 discusses the use of DoD personnel to operate or maintain equipment. Here, T-10 Air Force personnel were used to operate Federal equipment, a C-130. "The use of DoD personnel to operate or maintain, or to assist in operating

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or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States.” Here, civilians were being evacuated as a result of Hurricane Harvey. In the wake of a major disaster like Hurricane Harvey, civilian evacuation is necessary and time is of the essence to save lives and prevent human suffering. There is no argument as to whether the T-10 personnel were the appropriate sourcing solution to operate the C-130.

In this evacuation, the point of contention arose when debating the ability of the T-10 personnel to support Coast Guard Law Enforcement in the search of civilians and their belongings that were to be transported. While T-10 personnel operation of the C-130 was authorized, DoDI 3025.21, Enclosure 3, para. 1.d(1), states that T-10 “assistance may not involve DoD personnel directly participating in a law enforcement operation (as described in paragraph 1.c. of this enclosure.)” [DoDI 3025.21, Enclosure 3, para. 1.d(1)]

Conclusion: As it relates to this fact pattern as presented, Federal military forces could not assist Coast Guard Law Enforcement personnel as they searched evacuees and their belongings prior to boarding the C-130 because to do so would have violated Federal law and DoD policy. This analysis does not apply to the State military department, which governs the National Guard in their State Active Duty and T-32 statuses. Thus, members of the National Guard in the State Active Duty and T-32 statuses, may assist the USCG in the performance of the searches. Enclosure 4 of DoDI 3025.21 is “DoD Support of CDO [civil disturbance operations].” Lastly, while not applicable in this occurrence, there are instances where direct assistance (e.g., search, seizure, and arrest) by T-10 personnel is authorized. (DoDI 3025.21, Enclosure 3, para. 1.b)

PRACTICE TIP: One may wonder about the difference in this scenario and searches of civilians and their property performed by T-10 personnel as the civilians enter Federal installations. T-10 law enforcement personnel may search civilians and their property as they enter Federal installations incident to the Military Purpose Doctrine. DoDI 3025.21, paragraph 1.b(1), states, “Categories of active participation in direct law-enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are: (1) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civil authorities. This does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act.” The primary purpose of T-10 personnel searching civilians and their possessions as they enter Federal installations furthers the DoD function of protecting DoD property and personnel. The question in the case of a mission assigned to the DoD by FEMA in response to a major disaster is, “What is the DoD’s independent military purpose for the search of evacuees and their possessions as they board the C-130?” One may answer that the independent military purpose is the protection of the DoD equipment, the C-130, and military personnel, the T-10 Air Force aviators operating the C-130. Were the T-10 personnel authorized to protect the C-130 and the T-10 personnel operating the aircraft? Yes. Under the Military Purpose Doctrine, protecting the Federal equipment and personnel could have meant refusing to allow the evacuees to board regardless of the searches

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performed by the U.S. Coast Guard. However, this action would have had detrimental, long-reaching consequences. To engage in searching the evacuees and their possessions would trigger the Posse Comitatus Act. Cases such as *U.S. v Chon*, 210 F.3d 990 (2000), provide the appropriate analysis. In *Chon*, the DoD “independent primary purpose” argument was upheld because the DoD had reason to believe that Chae Wan Chon, and others, had committed a crime involving the Federal equipment before the DoD performed the investigation. In this instance, the DoD had no reason to believe that any of the evacuees had committed a crime involving the C-130. Therefore, a search of the evacuees and their possessions would not be authorized. Also, paragraph A.2.2.2 of the DSCA Handbook for Tactical Level Commanders, GTA90-01-020, warns that the Military Purpose Doctrine “must be used with caution. It does not include action taken with the primary purpose of directly and actively aiding civilian law enforcement officials that is prohibited by the PCA. As long as the DoD unit is performing a legitimate military or foreign affairs function, then any law enforcement benefit to civil law enforcement authorities will be considered ‘incidental’ and would not be a violation of the PCA.”

J: MARITIME

J.1—DoD Contracts with non-U.S. Flagged Ships

Issue: May the DoD contract with non-U.S. flagged ships to support the demand for hurricane relief supplies during a disaster response?

Authority(ies): “The Jones Act” 46 U.S.C. § 883 (Merchant Marine Act of 1920)

Discussion: The Jones Act is a federal statute that provides for the promotion and maintenance of the American Merchant Marine. Among other purposes, the law regulates maritime commerce in US waters and between US ports. Section 27 of the Jones Act deals with cabotage and requires that all goods transported by water between US ports be carried on US-flag ships, constructed in the US, owned by US citizens, and crewed by US citizens and US permanent residents. The Jones Act had no practical effect on DoD, but was an issue for Puerto Rico as the Act does not allow foreign flagged ships to transport relief supplies from one coast of the US to another (including territories). This was important because it appeared there was a need to contract non-US flagged shipping to keep up with the demand for hurricane relief supplies. Requests for waivers of the Act and its provisions are reviewed by DHS on a case-by-case basis, and can only be granted based on interest of national defense. Historically, waivers have only been granted in cases of national emergencies and/or upon the request of SECDEF. The Act was waived by DHS for hurricane response during hurricane Harvey and Irma in the continental US, but was not waived for Puerto Rico. This became an issue because there was a perception that this was hindering Hurricane Maria recovery efforts in Puerto Rico. The Act was eventually waived for Puerto Rico. The U.S. Virgin Islands, although a US territory, are exempt from the Act as it specifically states they are outside of the US Customs territory.

Conclusion: The DoD may contract with non-U.S. flagged ships to support the demand for hurricane relief supplies during a disaster response only if a waiver is received from the DHS.

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J.2—Coast Guard Boarding Team Security at a USCG Installation

Issue: May a Coast Guard boarding team be used to provide a security presence on a Coast Guard installation that lacks security due to all other personnel being evacuated?

Authority(ies): 14 U.S.C. § 93 [Commandant (USCG), General Powers]; Commandant Instruction Manual 16247.1 (The Maritime Law Enforcement Manual); UCMJ Art. 9(e); 10 U.S.C. § 809(e); 18 U.S.C. § 1382

Discussion: Hurricane Irma was predicted to make landfall along the Florida Keys. As a result, the D7 Commander placed all active duty members attached to Sector Key West on TDY orders and evacuated all dependents. Only the Sector Commander remained behind. The Sector Commander, along with some members of the local government, rode the storm out in a local hotel.

The storm caused extensive damage throughout the keys to include damage to Sector Key West and USCG housing on Key West. The Sector Commander observed damage to the fencing along the perimeter of the Sector which posed a security risk. Given the lack of running water and electricity in the aftermath of the storm, he was concerned about the potential for unauthorized persons coming onto USCG property seeking access to relief items as well as potential looting.

Because all personnel were sent TDY, there was no security presence at the Sector. There were however, multiple USCG cutters nearby with boarding teams onboard. These cutters were conducting storm avoidance in the gulf and quickly arrived on scene after the storm passed. The Sector Commander, in need of a security presence at the Sector, requested that Boarding Team Members from the nearby cutters be utilized for security. D7 legal was asked to provide an opinion on whether boarding teams could be used to provide security on Sector Key West.

D7 legal opined that this was a permissible use of USCG boarding teams. The individual unit commanding officer has the ultimate responsibility for the security of their command. 14 U.S.C. §§ 93(a)(2) and (a)(10) provide commanding officers the inherent authority to establish and maintain the security of their unit and USCG shore facilities. This authority allows the Sector Commander to use boarding team members to provide security for the facility.

Any use of force by Boarding Team Members conducting security shall be done in accordance with the Maritime Law Enforcement Manual. In an enforcement situation, security personnel may use only that level of force necessary to control and terminate unlawful resistance, and to preclude any further physical confrontation against law enforcement personnel or other persons.

Unless otherwise directed by the Commanding Officer as detailed in Chapter 4.B.3.e of the Maritime Law Enforcement Manual, personnel may exercise individual self-defense, which includes the defense of other persons. Additionally, Commanding Officers always retain the

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inherent right and obligation to exercise unit self-defense in response to active aggression or imminent danger.

Authority for military law enforcement officials to detain civilians has been inferred from UCMJ Art. 9(e), 10 U.S.C. § 809(e) and from 18 U.S.C. § 1382 (makes punishable the entry onto a military installation for any purpose prohibited by law or regulation, or after having been removed therefrom). The authority is limited to the confines of the military facility. This authority is derived from the power to maintain order, security, and discipline on a military reservation as is necessary to military operations. Should detention occur, arrangements should be made as soon as practicable to transfer the detained individuals to appropriate civilian or federal law enforcement personnel.

Conclusion: Yes. The unit Commanding Officer has the authority to use a Coast Guard boarding team to provide a security presence on a Coast Guard installation that lacks security due to all personnel being evacuated. However, the personnel involved should follow the Coast Guard use of force policy. (Chapter 4 of the Maritime Law Enforcement Manual) Anytime the majority of personnel are evacuated or sent TDY from their unit, installation security could become an issue. It is recommended that units review contingency security plans and have a plan in place for these situations. Prior to any contingency units should coordinate the process used to detain individuals who unlawfully enter military facilities.

J.3—USCG Arrests Made under Emergency Support Function #13 (ESF-13)

Issue: May Coast Guard Investigative Service Special Agents make arrest for violations of State law when mobilized under Emergency Support Function-13, Public Safety and Security?

Authority(ies): Federal laws do not grant authority for Coast Guard Investigative Service Special Agents to make arrests for violations of State law. However, State laws may provide such authority. [14 U.S.C. § 141 (Cooperation with other Agencies, States, territories, and Political Subdivisions)]

Discussion: In the wake of Hurricane Harvey, the State of Texas made a Stafford Act request for Federal support to assist with public safety. FEMA granted the request and issued a Mission Assignment to DHS under Emergency Support Function-13. To assist FEMA, DHS sent out a request to its agencies to provide 1,500 Federal Law Enforcement Officers (FLEO) in support of Harvey response operations. The Office of Maritime and International Law was able to obtain greater clarification on the nature of the request and determined that the capabilities required were those that align with Coast Guard Investigative Service duties and functions rather than those of uniformed CG Law Enforcement forces such as Maritime Safety and Security Team/Maritime Security Response Team (MSST/MSRT). As a result, 40 Coast Guard Investigative Service special agents were selected to meet the DHS Emergency Support Function-13 request.

Prior to their deployment, Coast Guard Investigative Service needed to determine the deploying special agents' law enforcement authority within the States of Texas and Louisiana.

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Specifically, questions arose regarding the authority for agents to make arrests for violations of State law. Counsel for Coast Guard Investigative Service conducted this research and drafted an opinion outlining the authority. The opinion was based, in part, on a DOJ memo written for the Bureau of Alcohol, Tobacco, Firearms and Explosives addressing State and local deputation of Federal Law Enforcement Officers during Stafford Act deployments generally, as well as a memo written by the acting Emergency Support Function-13 coordinator addressing the issue as it specifically related to Harvey.

Ultimately, Coast Guard Investigative Service Counsel concluded that Coast Guard Investigative Service Special Agents could exercise arrest authority for felony-level, State criminal offenses during Harvey response operations utilizing each State's citizen's arrest authority. The analysis began with the premise that authority for Federal Law Enforcement Officers to conduct arrests must be expressly conferred by statute. No Federal law, to include the Stafford Act, confers the authority for Federal Law Enforcement Officers to make arrests for violations of State law. However, this authority need not be conferred by a Federal statute. Instead, State law may provide the necessary authority. Some States have deputation laws, which confer arrest authority upon Federal Law Enforcement Officers, while others have laws granting all citizens the power to arrest in particular circumstances.

Texas law confers limited peace officer authority upon certain Federal Law Enforcement Officers. Under the statute, select Federal Law Enforcement Officers are designated "special investigators" and granted the powers of arrest, search, and seizure for felony offenses. Coast Guard Investigative Service Special Agents are not among the Federal Law Enforcement Officers included in the statute and therefore this authority did not apply to them. However, Texas law does permit private citizens to exercise arrest authority for felony offenses committed in their presence. Thus, Coast Guard Investigative Service Special Agents were able to utilize the authority granted to private citizens in order to make arrests for certain violations of State law.

Louisiana does not confer peace officer authority to any Federal Law Enforcement Officer by statute, but it does have laws that allow deputation by acts of certain State officials. It was unclear whether State officials would utilize these laws to confer law enforcement authority to Coast Guard Investigative Service Special Agents mobilized to assist, however, just like in Texas, this was not necessary to provide the agents with arrest authority. Like Texas, Louisiana permits a private person to make an arrest for a felony violation of State law. The Louisiana statute is actually more permissive in that it does not require the crime to have been committed in the presence of the person making the arrest. It does however, require the prisoner to be turned over to a peace officer immediately. Had Coast Guard Investigative Service Special Agents needed to exercise the power of arrest in Louisiana, this statute provided the authority. (Appendices K and L)

Conclusion: Major hurricane response efforts will often create a need for Federal Law Enforcement Officers to mobilize pursuant to an Emergency Support Function-13 MA. When this mobilization includes Coast Guard Investigative Service Special Agents, USCG attorneys

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should be prepared to carefully review State deputation laws as well as State citizen's arrests laws in order to determine the scope of law enforcement authority conferred to the deploying agents as well as any prerequisites to deputation. USCG attorneys should be searching for specific grants of authority that provide a basis for enforcing that particular State's laws. It is a State-by-State analysis because each State must have the legal framework in place to authorize Federal Law Enforcement Officers actions.

J.4—USCG Receipt of a Mission Assignment under Emergency Support Function #10

Issue: May the Coast Guard (USCG) receive an Emergency Support Function-10 (Oil and Hazardous Materials Response) Mission Assignment and reimbursement from FEMA to remove derelict and abandoned vessels located on Federal land?

Authority(ies): 44 CFR Section 206.208(c)(2) (Federal Disaster Assistance); 43 U.S.C. §§ 1301-1315 (The Submerged Lands Act); 48 U.S.C. § 1705(b); 33 U.S.C. § 409; 33 CFR Part 245

Discussion: Hurricanes Irma and Maria caused numerous recreational vessels to wash up onshore on Federal land. Some of these vessels were located on U.S. Navy (USN) property and others on property owned by the Department of the Interior. Representatives from these agencies contacted the USCG seeking any assistance that could be provided in their removal. The USN and Department of the Interior were hoping that FEMA would either provide funding directly or issue the USCG an Emergency Support Function-10 Mission Assignment that would allow the USCG to coordinate the vessel and debris removal. Assignment of the mission was not possible as Stafford Act funding is not the appropriate source for a DoD Mission Assignment to perform debris removal or hazmat mitigation on Federal land. FEMA cannot reimburse costs incurred by another Federal agency for work performed pursuant to disaster assistance authorities independent of the Stafford Act, or if any part of the requested work falls within the statutory authority of another Federal agency. [44 CFR Section 206.8(b); 44 CFR Section 206.208(c)(2)] The DoD Office of Director of Ocean Engineering & Supervisor of Diving and Salvage (SUPSALV) has the statutory authority for removal of vessels and debris on DoD property. Similarly, the DOI has statutory responsibility for the removal of vessels and debris on DOI property. Therefore, FEMA could not issue Mission Assignments for the cleanup and removal of vessels located on Federal land.

In addition to the vessels onshore, there were many sunken, abandoned, and derelict vessels located in the waters adjoining Federal land. D7 legal was tasked with determining whether Federal property extends into the water. The Submerged Lands Act provides the answer to this question. (43 U.S.C. §§ 1301-1315) Under the Submerged Lands Act, title and ownership of submerged lands and resources within 3 geographic miles of the coast line was granted to the States. Thus, the waters adjoining Federal property are owned by the State, and therefore FEMA would not be prohibited from issuing an Emergency Support Function-10 Mission Assignment to assist with oil and hazardous material removal in these waters.

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This outcome, however, did not hold true for the waters adjoining Department of the Interior land at Virgin Islands National Park. The U.S. specifically retained the rights to the submerged lands surrounding Virgin Islands National Park . [48 U.S.C. § 1705(b)(x)] Therefore, the same regulation that prohibited FEMA from issuing an MA to remove vessels onshore on Federal land also prohibited the removal of vessels in the water surrounding Virgin Islands National Park. The Department of the Interior had the authority to remove and was responsible for the removal of these vessels. The Department of the Interior would be required to use their own funds or seek a supplemental appropriation if it lacked sufficient resources to conduct the removal.

There seemed to be some confusion as to why FEMA was unable to fund these activities. This may have stemmed from the fact that the Army Corps of Engineers, a Federal entity, was conducting salvage operations in the vicinity and the classification of the land, or submerged land (State or Federal), was immaterial in determining whether they had the authority to act. Under Title 33, maintaining, dredging or disposition of materials on, over and under a Federally navigable channel falls under the authority of the Army Corps of Engineers. (33 U.S.C. § 409; 33 CFR Part 245) Therefore, notwithstanding whether the channel is in the internal (State) waters, in the territorial seas (TTS), or elsewhere, the Army Corps of Engineers has authority, funding and the obligation to perform hazmat/debris removal in that Federal waterway. However, that authority is limited to the navigable channel and other Federally navigable waters where the obstruction poses a hazard to navigation (e.g., turning basins). (33 CFR Part 245) Therefore, if the area in question is outside the Federally controlled area, the Army Corps of Engineers would not be the proper source of funding.

During the Irma response, FEMA opened the Disaster Response Fund and authorized Federal disaster funding to the State of Florida to conduct vessel removal. Subsequently, an ESF-10 Mission Assignment was issued to the USCG to assist the State of FL in performing debris/hazmat removal in State waters, outside of the Army Corps of Engineers controlled areas. Pursuant to the Federal/State Agreement, Florida was subject to a 10% cost share for these operations. This agreement however, did not cover the removal of debris on Federal land because it was prohibited by FEMA regulations as discussed above.

The Oil Spill Liability Trust Fund was discussed as another possible source of funding to assist USN and Department of the Interior, however this funding source was also not the appropriate vehicle to remove vessels and debris on Federal Land. The Oil Pollution Act of 1990 does provide Federal funding for hazmat removal in the absence of a responsible party, but hazmat removal does not typically result in the removal of an entire vessel. In most cases, hazmat is removed from the sunken or derelict vessel and the vessel will remain where it is.

Ultimately, both USN and Department of the Interior were responsible for removal of vessels on land that fell under their respective jurisdictions. The Department of the Interior was also responsible for the removal of vessels in the waters surrounding Virgin Islands National Park. USCG attorneys were instrumental in communicating the authorities under which this removal could be accomplished, the limitations on those authorities, and also the lack of

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authority, to USCG leadership as well as our Federal partner agencies. Additionally, the advice provided by USCG attorneys was coordinated prior to release, thus ensuring a consistent message.

Conclusion: Under 44 CF Section 206.208(c)(2), FEMA cannot provide reimbursement for any work that falls within the statutory authority of another Federal agency. Post storm, other Federal agencies will likely reach out to the USCG seeking assistance for the removal of vessels and debris. To determine what, if any, assistance the USCG can provide, an understanding of the limitations imposed by FEMA regulations and Oil Pollution Act 90 is needed. The location of the vessels and debris is one important factor that could limit funding and authority to assist. Prior to making commitments to other agencies or providing advice to senior USCG leaders, USCG attorneys should ensure the issues have been run through the legal technical chain to ensure consistent advice and messaging.

J.5—Foreign Cruise Ship Transportation of U.S. Citizen Evacuees

Issue: Can foreign cruise ship’s embark passengers needing evacuation from St. Thomas and transport them to Puerto Rico?

Authority(ies): 46 U.S.C. § 55103 (Passenger Vessel Safety Act)

Discussion: St. Thomas received extensive damage as a result of Hurricane Irma. A local hotel hired a ferry from Puerto Rico to assist in evacuating guests from the hotel. The ferry only took guests from the hotel, leaving behind many others who desired to evacuate. In response to this situation, a major cruise line volunteered to provide a cruise ship that would either evacuate individuals from St. Thomas to Puerto Rico, or moor alongside in St. Thomas and act as a floating hotel. The cruise ship was not a U.S. flagged vessel. This raised questions regarding the application of the Passenger Vessel Safety Act.

The Passenger Vessel Safety Act provides that “no foreign vessel shall transport passengers between ports or places in the United States, either directly or by way of a foreign port. . . .” The Passenger Vessel Safety Act protects U.S. shipping interests by providing a “legal structure that guarantees a coastwise monopoly to American shipping and thereby promotes development of the American merchant marine.”

The Passenger Vessel Safety Act further provides that the transportation of passengers between U.S. points is reserved for coastwise-qualified vessels. Pursuant to section 55103, “a vessel may not transport passengers between ports or places in the United States to which the coastwise laws apply, either directly or via a foreign port, unless the vessel: (1) is wholly owned by citizens of the United States for purposes of engaging in the coastwise trade; and (2) has been issued a certificate of documentation with a coastwise endorsement under chapter 121 of [Title 46] or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.” Thus, foreign flagged vessels and U.S. vessels that do not have a coastwise endorsement on their document are prohibited from transporting passengers between ports where the coastwise laws apply.

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A foreign cruise ship transporting passengers from St. Thomas to Puerto Rico would not violate the Passenger Vessel Safety Act because the coastwise laws do not apply to the U.S. Virgin Islands. The Passenger Vessel Safety Act applies to the U.S., including the island territories and possessions of the U.S. However, the coastwise laws generally do not apply to American Samoa, the Northern Mariana Islands, or the U.S. Virgin Islands. Therefore, transport between St. Thomas and Puerto Rico by a foreign cruise ship is not prohibited by the Passenger Vessel Safety Act.

Similarly, using the cruise ship as a floating hotel, even if it were to enter International Waters for a period of time, would not be prohibited by the Passenger Vessel Safety Act. Assuming the passengers would at some point disembark back in St. Thomas, the use of the cruise ship on this manner would be considered a “cruise to nowhere.” A “cruise to nowhere” is the transportation of passengers from a U.S. point to the high seas or foreign waters and back to the same point from which the passengers embarked, assuming the passengers do not go ashore, even temporarily, at another U.S. point. This is not considered coastwise transportation.

Conclusion: A foreign cruise ship transporting passengers from St. Thomas to Puerto Rico would not violate 46 U.S.C. § 55103, the Passenger Vessel Safety Act, because the coastwise laws do not apply to the U.S. Virgin Islands. Hurricanes that strike islands in the Caribbean will often require the evacuation of large numbers of people. When cruise lines or other private entities seek to assist by providing vessels that will transport evacuees to or from U.S. territories, USCG attorneys will need to understand what, if any, limitations are imposed on these vessels under the Passenger Vessel Safety Act.

J.6—Investigation of Civilian Death onboard a USN Ship

Issue: What are the legal/investigation requirements following the death of a local civilian patient onboard a USN ship?

Authority(ies): BUMEDINST 5360.1 (Decedent Affairs Manual); COMNAVSURFPAC/COMNAVSURFLANT INSTRUCTION 6000.1 (Shipboard Medical Procedures Manual); BUMEDINST 6010.13 (Quality Assurance Program)

Discussion: A civilian (non-DoD) elderly woman died from cardiac arrest while onboard the USS COMFORT (COM). Her death was the first of several civilian deaths onboard a Navy ship. The question was whether a legal investigation was required. Per Medical Treatment Facility Standard Operating Procedure, and the Navy Bureau of Medicine and Surgery policy, a “Code Review” is required. A Code Review is a medical comprehensive review conducted by multiple subject matter experts in areas of care that the patient would have received. The legal findings from that review are that the standard of practice was met and the patient received comparable practice and care as would have been conducted/received at a CONUS facility. The Code Review meets both the Navy Bureau of Medicine and Surgery and JAG Manual Preliminary Inquiry [JAGMAN (PI)] requirements. The Code Review documents the information required

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for a Litigation Report. In this case, codes 11 (Admiralty) and 15 (Claims) were notified. Generally, medical malpractice law would apply. However, because there was no evidence malpractice, Code 11 only requested the name of the patient for their records, and required no further investigation.

Conclusion: Navy Bureau of Medicine and Surgery policy requires a Code Review for any death onboard a navy hospital ship. This is a medical review conducted by subject matter experts to determine whether the level of care was the same the patient would have received in a CONUS medical facility.

J.7—USCG Payment for USCG Personnel Lodging

Issue: May the USCG pay for hotel rooms near the duty station for District-7 (D7) personnel when emergency conditions make commuting dangerous?

Authority(ies): Joint Travel Regulation (JTR), para. 020602

Discussion: After Irma passed through Florida, conditions in Miami made it unsafe for D7 command center watch standers to commute from their homes to the Brickell Federal Building for duty. For that reason, D7 sought to book hotels rooms close to the building. D7 legal was asked for an opinion on whether the USCG could use funds to pay for these hotel rooms.

D7, in concurrence with the Office of General Law (LGL), concluded that JTR 020602 allowed for the issuance of TDY orders, to include lodging, for the watch standers and therefore the hotel rooms could be purchased using USCG funds. JTR 020602 is entitled “TDY within the PDS limits under emergency circumstances.” It states that competent authority may authorize travel and transportation allowances for a service member who performs duty: (a) during emergencies that threaten injury to human life or damage to Federal Government property, (b) at a location within the PDS limits, (c) at other than at the Service member’s residence or normal duty location, and (d) at overnight accommodations used for duty.

The Miami area had not fully recovered from the damage sustained by Hurricane Irma. Poor roads, localized flooding, downed power lines, and debris all stood to make travel to and from the Brickell building potentially hazards for USCG members. Furthermore, acquiring gasoline for vehicles was still difficult due to short supply. Therefore, an emergency situation existed that fulfills the criteria in subsection (a) above. The remaining conditions were also met and therefore the watch standers were able to receive TDY orders until conditions improved.

It was noted, however, that this should not be seen as a long-term solution. Additionally, this opinion was not driven by a habitability assessment of an individual’s home, but on the determination that an emergency situation that threatens human life exists in the Miami area. Conditions in Miami needed to be continually reassessed, and once the emergency had passed, use of this authority would no longer be authorized.

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Conclusion: Yes. The USCG may pay for hotel rooms near the duty station for D7 personnel when emergency conditions make commuting dangerous because the Joint Travel Regulations, paragraph 020602, allows for the issuance of TDY orders, to include lodging, during emergency circumstances.

J.8—USCG Conduct of Welfare Checks and Provision of Supplies

Issue: May USCG personnel conduct welfare checks and provide essential supplies to non-military dependent family members of USCG personnel who remained on Puerto Rico?

Authority(ies): 14 U.S.C. § 88(b)(1) (Saving Life and Property)

Discussion: Puerto Rico was devastated by Hurricane Maria. Roads, electricity, potable water, and communication systems were destroyed throughout the island. Reconstruction of the commonwealth's infrastructure took many months. As a result, the distribution of relief supplies and ability of off-island family members to reach their relatives was extremely limited. Numerous USCG personnel asked that USCG responders on the ground in Puerto Rico conduct welfare checks on relatives. The D7 Commander issued an evacuation order for USCG employees and dependents. However, non-dependent immediate family (grandparents and their descendants) members were not covered by the evacuation order. Many of the requests for welfare checks were for non-dependent immediate family members who lived in remote parts of the island, isolated from the distribution of relief supplies.

The D7 legal office was asked whether USCG personnel and resources could be used to conduct welfare checks on non-dependent immediate family members. Additionally, advice was sought regarding whether aid could be provided to these non-dependent immediate family members if they were found in need of lifesaving supplies.

D7 ultimately concluded that the USCG has the authority to conduct these welfare checks. The goal of the USCG's Search and Rescue program is to prevent loss of life in every situation where USCG actions and performance could possibly be brought to bear.⁴³ 14 U.S.C. § 88, allows the USCG to render aid to persons and protect and save property at any time and at any place at which USCG facilities and personnel are available and can be effectively utilized. Additionally, the statute mandates the Commandant make full use of all available and qualified resources, including the Coast Guard Auxiliary, in rendering aid under this subsection in nonemergency cases. Lastly, in the maritime environment, the USCG may furnish clothing, food, lodging, medicines, and other necessary supplies and services to persons succored by the USCG.

The situation on Puerto Rico presented a threat to life and property. The threat of loss was not immediate in all cases, but was often unpredictable. Each resident's ability to survive depended on the resources they had at their home, their location on the island, the status of communication and transportation infrastructure in the surrounding area, and the emergency responder's ability to reach and communicate with them. The USCG is authorized to use its resources and capabilities to save lives wherever and whenever it can. Welfare checks were

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necessary to determine if these residents of Puerto Rico were threatened by loss of life. While not explicitly authorized in the U.S. Code, the distribution of food and supplies is cited as an example of the type of aid the USCG may provide at sea. Because the USCG has the authority to render aid necessary to save lives ashore, it is reasonable for the USCG to also distribute supplies to people succored ashore if they need the supplies to survive.

Conclusion: 14 U.S.C. § 88(b)(1) allows the USCG to render aid to persons and protect and save property at any time and at any place at which USCG facilities and personnel are available and can be effectively utilized. The USCG Search and Rescue authority is broad and the full extent of that authority was utilized in this case. Providing information to USCG members about the status of their family was a laudable goal and the comfort in knowing that family members were ok would certainly increase members' mission effectiveness. This should be balanced against the need to ensure USCG personnel and assets are ready and available to serve the public at large.

K. FOREIGN DISASTER RESPONSE

K.1—Foreign Civilian Evacuation

Issue: What is the process for the DoD to support evacuation of civilians located on foreign islands during hurricanes?

Authority(ies): USNORTHCOM CONPLAN 3729-12 (International Disaster Response); 10 U.S.C. § 404 (Foreign Disaster Assistance); EO 12966 (Foreign Disaster Assistance); E0 12163 (Administration of Foreign Disaster Assistance and Related Functions); DoDD 5100.46 (Foreign Disaster Relief)

Discussion: On 5 Sep 2017, while serving on shift, a judge advocate was presented a Diplomatic Note from the Bahamas requesting civilian evacuation support for several islands. The issue was understanding how the process works. The Department of State is the principal agency for coordinating international disaster response, and the U.S. Agency for International Development, along with its office of Foreign Disaster Assistance, performs the actual coordination. For DoD support to foreign governments, the U.S. Agency for International Development/Office of U.S. Foreign Disaster Assistance will submit a request to the Executive Secretary, Office of the Secretary of Defense. The Secretary of Defense, through Joint Staff, will then task the U.S. Northern Command with providing support.

Executive Order 12966 governs the implementation of 10 U.S.C. § 404. Section 2 of the Executive Order states that, "The Secretary of Defense shall provide disaster assistance only: (a) at the direction of the President; or (b) with the concurrence of the Secretary of State; or (c) in emergency situations in order to save human lives, where there is not sufficient time to seek the prior initial concurrence of the Secretary of State, in which case the Secretary of Defense shall advise, and seek the concurrence of, the Secretary of State as soon as practicable thereafter."

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Paragraph 4 of DoDD 5100.45 states that, “It is DoD policy that: a. DoD shall respond to foreign disasters in support of the U.S. Agency for International Development pursuant to E.O. 12163 and section 2292(b) of [T]itle 22, U.S.C. . . . b. In accordance with [Executive Order 12966], DoD Components shall provide disaster assistance in support of U.S. [Foreign Disaster Relief] efforts only: (1) At the direction of the President; (2) When the Secretary of Defense or a designee approves, with the concurrence of the Secretary of State, a [R]equest [F]or [A]ssistance from another Federal department or agency; or (3) In emergency situations in order to save human lives, where there is not sufficient time to seek the prior concurrence of the Secretary of State, in which case the Secretary of Defense shall advise and seek the concurrence of the Secretary of State as soon as practicable thereafter.”

Conclusion: The process for the DoD to support evacuation of civilians located on foreign islands during hurricanes is as stated above. In this particular instance, the DoD did not provide the requested support. Instead, the Bahamas evacuated civilians by using chartered civilian airliners. Ideally, all offers and requests for support involving foreign nations should be coordinated through normal diplomatic channels before U.S. Northern Command receives a task to execute. An important lesson learned is that the special binational command relationship between the United States and Canada does not change the involvement of the Department of State in processing offers and requests for support.

K.2—American Citizen Evacuation

Issue: During a disaster, must American citizens located in foreign lands reimburse the Department of State if the Department of State bears the evacuation costs up front?

Authority(ies): 22 U.S.C. § 2671 (Emergency Expenditures); 22 U.S.C. § 2715 (Procedures Regarding Major Disasters and Incidents Abroad Affecting United States Citizens)

Discussion: Many American citizens were located in Dominica when Hurricane Maria made landfall. 22 U.S.C. § 2671 authorizes emergency expenditures by the Department of State to evacuate “United States Government employees and their dependents,” as well as “private United States citizens or third-country nationals, on a reimbursable bases to the maximum extent practicable.” 22 U.S.C. § 2715 states that, “In the case of a major disaster or incident abroad which affects the health and safety of citizens of the United States residing or traveling abroad, the Secretary of State shall provide prompt and thorough notification of all appropriate information concerning such disaster or incident and its effect on United States citizens to the next-of-kin of such individuals.”

Because of the § 2671 reimbursement requirement and fear of having to pay great sums of money, most of the American citizens were declining to be evacuated via DoD helicopter lift. The Department of Defense did not require the American citizens to complete a DS-5528 (Evacuee Manifest and Promissory Note) for the American citizens to board the helicopters and be evacuated to the nearest seaport of debarkation or aerial port of debarkation. The DoD did not require reimbursement either. The DS-5528, is designed for use when the U.S. Government

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evacuates employees and their dependents, private U.S. citizens, and Third Country Nationals from a designated crisis location when their lives are endangered by war, civil unrest, natural disaster, or other similar events. In the event of a U.S. government-coordinated evacuation, American citizen evacuees complete a DS-5528 to receive travel assistance from the crisis location to the Foreign Safe Haven, or from the crisis location directly to the United States. Loans issued using the DS-5528 are not drawn from Consular Affairs funds. As a result, the post must request approval through Consular Affairs, Office of Special Counsel before instructing evacuees to complete this form.

22 U.S.C. § 2671 requires the Department of State to seek reimbursement of transportation costs from the American citizens evacuated in the amount that the evacuee “would have been charged for a reasonable commercial air fare immediately prior to the events giving rise to the evacuation.” In practice, provided it is to the benefit of the evacuee, the Department of State assigns the amount based on the cost of a reasonable commercial fare on a comparable mode of transportation. For example, if a ferry is chartered, then the cost of a ticket on a ferry is considered for reimbursement purposes. The Department of State does not bill evacuees for transportation costs who fall under Chief of Mission authority. In addition to serving as a loan agreement, Part 2 of the DD-5528, the form also serves as the official manifest of each evacuation transport(s) and as a liability acknowledgement. The DD-5528 also provides an opportunity for the evacuee to execute a Privacy Act Waiver. This is why it is critical for the consular officer to complete Part 3 and Part 4 of every form.

Conclusion: Yes. During a disaster, American citizens located in foreign lands must reimburse the Department of State if the Department of State bears the cost of evacuation up front. American citizens requesting evacuation are to fill out the DD-5528 prior to being evacuated.

K.3—Transfer of Goods to Affected Countries and Military Partners

Issue: May the Department of Defense transfer goods to affected countries and military partners?

Authority(ies): 10 U.S.C. § 2557 (Excess Nonlethal Supplies: Availability for Humanitarian Relief, Domestic Emergency Assistance, and Homeless Veterans Assistance); 10 U.S.C. § 404 (Foreign Disaster Assistance); DoD Directive 2010.9 (Acquisition and Cross-Servicing Agreements), 28 Apr 2003; CJCSI 2120.01 (Acquisition and Cross-Servicing Agreements), 21 May 2015; DoD Directive 5100.46 (Foreign Disaster Relief)

Discussion: If the federal military is attempting to transfer materials to another country or to foreign citizens during a foreign disaster relief mission, such a transfer may be conducted under an Acquisition Cross Servicing Agreement, a Mission Tasking Matrix from the Office of United States Foreign Disaster Assistance, or under the excess property declaration process. Should a Joint Task Force attempt to transfer materials to a foreign country or foreign citizens using any other method, then violations of the Purpose Statute may occur. Such an error may also lead to improper accounting of the transferred material during redeployment auditing.

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Pursuant to foreign disaster relief operational doctrine, ideally every requirement is facilitated through a Mission Tasking Matrix. A Mission Tasking Matrix is a tool used by the office of United States Foreign Disaster Assistance to request field-level assistance from the Department of Defense. However, situations quickly arise when support is not included within an existing Mission Tasking Matrix request and/or the Office of United States Foreign Disaster Assistance is not able or does not agree with issuing a new Mission Tasking Matrix. These are tactical level support items that the Joint Task Force Commander may view as necessary to adequately support other partners (e.g., providing MREs to a partner force for sustainment purposes). The Office of United States Foreign Disaster Assistance tends to be frugal with Mission Tasking Matrixes because they do not want to be obliged to reimburse unless the support was definitely necessary, or they might not view the type of support as a unique military capability. The Office of United States Foreign Disaster Assistance also has many coordination requirements, not just with the affected host nation but also with the UN Cluster, and all of these stakeholders are sensitive to the appearance of an over-militarized response effort.

Acquisition Cross Servicing Agreements can be another viable option in the foreign disaster relief context. Normally the J4 will lead this process but judge advocates support substantially. The benefit of the Acquisition Cross Servicing Agreement is speed, at least relative to other options, and exchange or payment does not need to be completed for one year. Having a bilateral Acquisition Cross Servicing Agreement in place with a country essentially represents an “agreement to agree” on a reimbursable exchange of services or logistics at a future date. Usually the agreements will call for equal-value-exchanges or replacement-in-kind. Then, when an actual exchange (i.e., Acquisition Cross Servicing Agreement order/transaction) is agreed upon and signed off on, that is similar to writing a sole-source government contract. If all the Acquisition Cross Servicing Agreement requirements are not met, or if the orders are not done properly, then it will create problems for the Combatant Commander later. AFRICOM and CENTCOM were recently audited by the DoD Inspector General revealing issues with many of their Acquisition Cross Servicing Agreement transactions of the last few years.

Ideally, during Joint Task Force Leeward Islands operations, bilateral Acquisition Cross Servicing Agreement agreements would have been in place up front with the host nation(s) and all other conceivable supporting partners. SOUTHCOM is trying to get more Acquisition Cross Servicing Agreement agreements in place, but it is more complicated than it might appear. The Acquisition Cross Servicing Agreement process requires an advance agreement to exchange with the partner nation. Because the necessity for disaster response cannot always be predicted, having an advance agreement can be difficult. Further, the foreign may not know the amount of materials available for transfer to the United States, and the value of those materials. The Joint Task Force strongly recommended the provision of real-time federal support to the partner force to execute the operation. There is a tension between process and reality. Joint Task Force Leeward Islands/SOUTHCOM eventually detailed the Acquisition Cross Servicing Agreement process in the EXORD (MOD 009, 23 Sep 17) because of confusion (some MREs were actually handed out without the correct approval signature). As of this writing, paperwork is still ongoing for a couple Joint Task Force Leeward Islands Acquisition Cross Servicing Agreement

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exchanges. Some other Acquisition Cross Servicing Agreement orders were explored that just could not be worked out under operational timelines.

The final avenue to transfer materials to a partner force in the Foreign Disaster Relief context is the excess property process under 10 U.S.C. § 2557. This process was not used by Joint Task Force Leeward Islands during operations. It was considered in St. Martin/Saint Maarten, but the Acquisition Cross Servicing Agreement process was determined more suitable. In Dominica the Joint Task Force had excess MREs and wanted to use the excess property process. Soon into staffing, it became apparent that U.S. forces in Puerto Rico had an outstanding request for MREs. Filling such a need will always trump giving the MREs away.

Conclusion: For the judge advocate advising a Joint Task Force Commander during a foreign disaster relief operation, the Acquisition Cross Servicing Agreement process should be understood. An exchange should not be overpromised or committed without socializing the proposal with appropriate Combatant Command officials or their representatives. Also guard against the Joint Task Force staff getting creative with solicitations. The foreign partner should ask for assistance that is genuinely needed, not the other way around. Establish a relationship with the Combatant Command Acquisition Cross Servicing Agreement program manager as quickly as possible. Determine who the appropriate signing officials are for DoD and for partner forces. For DoD, ideally this will be delegated to someone in the Joint Task Force J4; but it might not have been delegated and/or the J4 might not have authority to approve materials owned by all the services (i.e., understand that the services are the materials providers). If possible, judge advocates should also be trained on and have access to the Global Automated Tracking and Reporting System, which is an automated tool that tracks and provides visibility on worldwide Acquisition Cross Servicing Agreements.

In terms of Mission Tasking Matrixes, often the judge advocate is faced with a scenario where the Joint Task Force asks whether the activity is included within a Mission Tasking Matrix, to which the Office of United States Foreign Disaster Assistance may respond saying that the activity is not included, and therefore no Overseas humanitarian, Disaster, and Civic Aid funding may be used. Whether the activity may still be performed may still be in question and would likely hinge on whether the Joint Task Force can present a persuasive case that the activity must be performed to accomplish another necessary goal (which could possibly be a Mission Tasking Matrix). The judge advocate must also ensure the Joint Task Force Commander knows whether Overseas Humanitarian, Disaster and Civic Aid funding will be available if that lesser activity is performed. There will not be Overseas Humanitarian, Disaster and Civic Aid reimbursement for it.

K.4—Synchronization of Security Cooperation and Foreign Disaster Relief

Observation: Either there should be better integration with the Office of United States Foreign Disaster Assistance or additional DoD policies should be created to further address foreign disaster relief in-depth.

Authority(ies): DoD Directive 5100.46 (Foreign Disaster Relief)

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Discussion: Carrying on from the above discussion on provision of materials to foreign partners during an Foreign Disaster Relief operation, it is noteworthy that often these are the same partner forces for which DoD has ongoing security cooperation and/or Building Partner Capacity (BPC) programs. In the Caribbean, this is normally members of the Regional Security System (RSS). While carrying out those programs, U.S. military units do have the authority to provide MREs, transport, and other materials when needed to adequately support partners and accomplish training objectives. Hence in the context of an actual Foreign Disaster Relief operation where a real world imperative exists, when working with some of those same partners, it is frustrating when Joint Task Force personnel inform those partners that support is not authorized. It undermines the overall goals of those security cooperation programs, many of which are specifically intended to build capacity for responding to disasters. DoD wants to remain the partner of choice in the Caribbean and it is in U.S. national security interest to do so. Moreover, the holistic strategy of all those DoD programs and the long-term SOUTHCOM vision on Foreign Disaster Relief is for our regional partners to shoulder more of the disaster response burden. If DoD cannot bring those partners on the scene of actual operations and practice with them then it will be difficult to achieve these strategic goals.

One example is with Military Aircraft (MILAIR). Pursuant to SOUTHCOM regulations (SC Regulation 45-1, Use of Military Aircraft and Foreign Aircraft), partner force personnel are not authorized on U.S. military aircraft absent an Acquisition Cross Servicing Agreement, Mission Tasking Matrix, or when flying Space “A” on previously scheduled flights. Joint Task Force-Leeward Island wanted to fly Jamaican forces into Dominique but authority did not exist to do so. Therefore, the Joint Task Force staff had to facilitate their transport by another partner country (Canada). Another example involved the lack of synchronization of Noncombatant Evacuation Operations and the provision of relief. Note, evacuations of American citizens in the affected countries was not mandatory, merely voluntary. DoD sent aircraft to these countries to pick up Americans, and there was a desire to load relief materials on to the aircraft for the sake of efficiency and speed. DoD was not able to pre-coordinate a Mission Tasking Matrix so this was not done. Separate flights/aircraft had to transport these materials. There should have been a way to work this out, presuming all of these materials were needed, either with better prior coordination with the Office of United States Foreign Disaster Assistance or via more flexible DoD authorities. As a general rule, neither the military or the Office of United States Foreign Disaster Assistance should push in logistics and materials to an affected country (i.e., “pull not push”) but that maxim sometimes works against the speedy provision of life-saving supplies. In the immediate aftermath of a disaster the needs are predictable (e.g., drinking water, medical supplies). The optic also caused a negative reaction amongst some of the local population. There was a feeling that the US could get in fast to rescue Americans, but that we were not prioritizing the provision of life-saving supplies.

However, USAID/Office of United States Foreign Disaster Assistance have equities on this issue too and are hesitant to agree on a broadening of DoD authorities during a Foreign Disaster Relief operation. In the example above, where the Jamaicans who had to be flown into Dominica by someone other than the United States, they turned out not being capable of

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contributing measurably to the relief efforts. The Jamaican force did not have the ability to sustain or transport themselves, so then the Joint Task Force had to try and find avenues to do that for them. Moreover, as the Office of United States Foreign Disaster Assistance emphasized afterward, the host nation officials in Dominica were not aware that those Jamaican military forces were being brought into the country. Foreign Disaster Relief authorities are limited, especially for foreign militaries, because those forces are meant to fill a gap in local capacity for a short duration. Those gaps are identified by the host nation, then routed through an international coordination mechanism (UN cluster typically), and then provided to the Office of United States Foreign Disaster Assistance, who may ask DoD to help if needed. Often Joint Task Force officials on the ground do not appreciate the complexity of all the machinations behind the Mission Tasking Matrixes process. Another point the Office of United States Foreign Disaster Assistance makes is that a Foreign Disaster Relief operation is not a training environment. The goal is the timely provision of life-saving aid. The Office of United States Foreign Disaster Assistance also points out that when unique military assistance is truly needed making it work is not a problem. What the Office of United States Foreign Disaster Assistance will not do is create Mission Tasking Matrixes to bring in military partners when it is not even clear they will be able to contribute. For all those reasons, trying to procure additional authorities for DoD will be viewed by many non-military stakeholders as running afoul of well-established guidelines and norms for the civilian led execution of Foreign Disaster Relief and could make on-scene management more difficult.

But this is not to suggest that DoD equities are not substantial or that a compromise cannot be reached. From the DoD perspective a Foreign Disaster Relief operation is not just about providing aid, it is about avoiding a strategic loss during the most prescient time for security cooperation and enabling our partners in the Caribbean to build disaster response capacity, so that the United States does not have to respond as often. In addition to tangible support to partners, SOUTHCOM would also like the ability to outsource Mission Tasking Matrixes to partner forces (and then DoD still receives the Overseas Humanitarian, Disaster and Civic Aid reimbursement). If this process can mature it would contribute to security cooperation goals, aid partners in disaster preparedness, and achieve operational objectives at the same time. Any potential DoD authority expansion would likely be some type of mil-to-mil, non-reimbursable DoD authority, but one that also required Office of United States Foreign Disaster Assistance concurrence. The Office of United States Foreign Disaster Assistance concurrence would prevent DoD from conducting parallel, independent operations which could run cross purposes to other relief efforts. In the wake of Joint Task Force – Leeward Island operations in 2017, SOUTHCOM is exploring options for more DoD authority during FDR operations to fill this gap, though SOUTHCOM is just one player in wider discussions between the Defense Security Cooperation Agency (DSCA), Office of the Secretary of Defense for Special Operations/Low Intensity Conflict, USAID, and DoS. There are a few possible authorities contained within the FY17 NDAA, which ushered in significant reforms and consolidations for DoD security cooperation programs. In particular, 10 USC §§321 & 331 seem to contemplate DoD support in this type of scenario, but those authorities have yet to be used in the Foreign Disaster Relief context, nor are there any corresponding instructions, doctrine, or funding. Section 331, which is actually a consolidation/re-codification of global lift and sustain authority, is probably the most realistic because: it allows SECDEF to designate operations for which

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support may be provided (which could be done in Foreign Disaster Relief authorization memo); specifically includes logistical support, supplies, and services to a friendly country; and it requires Secretary of State concurrence.

Recommendations: It seems the legal framework exists for use of additional, yet limited DoD authorities for providing support to partner forces during a Foreign Disaster Relief operation. The challenge is getting concurrence from all of the USG stakeholders and figuring out how to execute the authorities. There are also good arguments for DoD just synchronizing operations better with the Office of United States Foreign Disaster Assistance on the ground, for example by also ensuring staff are co-located during a Foreign Disaster Relief operation, which Joint Task Force – Leeward Island was not. As of this writing decisions have not been made on these issues, but Judge Advocates need to understand the background and history of these discussions. SOUTHCOM has a good argument for “getting to yes” this time around because significant funding is appropriated for Foreign Humanitarian Assistance and Building Partner Capacity programs in the Area of Operation, but then when there is an actual disaster those foreign partners cannot contribute absent U.S. support. The other important takeaway for judge advocates going forward, assuming more authorities materialize, is to guard against DoD mission creep and unilateral Foreign Disaster Relief activities during a crisis. If DoD gets approval to use §331, but a Joint Task Force fails to adequately coordinate with the Office of United States Foreign Disaster Assistance and/or conducts independent activities that end up undermining overall relief efforts, then that authority might go away again.

K.5—Understanding Foreign Humanitarian Assistance and DSCA

Observation: When deploying to support a foreign disaster relief mission, judge advocates should be prepared to answer questions regarding defense support of civil authorities, and vice versa.

Authority(ies): DoD Directive 3025.18 (Defense Support of Civil Authorities); DoD Directive 5100.46 (Foreign Disaster Relief); 28 U.S.C. § 1346, 2671-2680 (Federal Tort Claims Act)

Discussion: While Joint Task Force –Leeward Island HQ was in Puerto Rico, Hurricane Maria struck the island. FEMA representatives were already in Puerto Rico. They requested that USMC personnel assist with a few tasks (i.e., clearing roads of debris, cleaning up around public facilities, etc.). The Joint Task Force CDR desired to support these requests and was fairly forward leaning in wanting to get USMC personnel out of their hotels to do something. Furthermore, the Joint Task Force CDR wanted the USMC personnel to perform work in uniform and for it to be photographed by the public affairs staff. Naturally a bit of legal versus operator tension arose, but the judge advocates stood firm in advising that Joint Task Force-Leeward Island only had authority to conduct Foreign Disaster Relief operations and not Defense Support of Civil Authorities, unless approved by the proper channels (i.e., Mission Assignment (MA) routed through NORTHCOM).

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Allowing USMC personnel to conduct Defense Support of Civil Authorities while on orders to perform a Foreign Disaster Relief mission would likely have violated the Purpose Statute, which then could have led to a violation of the Anti-Deficiency Act if the Purpose Statute violation could not have been corrected. To correct a Purpose Statute violation, the proper funding must have existed in the right account in the right amount at the time of the violation, and the proper funding must exist in the right account in the right amount at the time of the correction. Also, an accident or injury occurred involving a civilian while the Marines were performing debris removal, then the protections of the Federal Tort Claims Act may not have been available because the Marines would not have been performing within the scope of their orders/duties when the accident or injury occurred. The debris removal did not constitute a “72-hour” life and limb emergency under DoDD 5100.46, nor an Immediate Response Authority scenario governed under DoDD 3025.18. Clearing debris cannot normally be justified as an immediate life-saving activity (unless clearing road to a hospital or something similar). Also relevant was that this was post-disaster declaration by the Governor, which placed coordinating authority with FEMA and would have enhanced scrutiny toward any Immediate Response Authority activities. Ultimately, in the midst of discussions over this issue the Joint Task Force judge advocates engaged with SOUTHCOM OSJA, who also weighed in. No USMC personnel conducted DSCA type activities in uniform. SOUTHCOM soon after included an EXORD MOD that clarified the coordinating requirements for DSCA activities in Puerto Rico (MOD 006, 20 Sep 17). This guidance clarified that Joint Task Force–Leeward Island should only provide DSCA assistance when tasked by SOUTHCOM (which would then coordinate with NORTHCOM) and that all FEMA requests in Puerto Rico needed to be directed to the NORTHCOM J3.

The eventual judge advocate advice was that Marines could choose to go out on their own accord (“off-duty” assistance), in civilian clothes, and clear debris or whatever else seemed practical to do, so long as these activities did not interfere with any official duties. Public affairs staff could photograph Marines in civilian clothes helping in Puerto Rico if desired. The only appropriate tasks Joint Task Force–Leeward Island personnel could officially undertake in Puerto Rico were those necessary to advance the Joint Task Force–Leeward Island mission. For example, USMC personnel could clear debris if it inhibited transit from the hotel lodging to the Air NG facility.

Recommendations: The takeaway for judge advocates is not to assume Foreign Disaster Relief and DSCA questions are always going to be clearly segmented. When deploying to support an Foreign Disaster Relief mission, be prepared to answer questions on DSCA too, and vice versa. During this hurricane season there were several judge advocates that deployed not knowing whether they would be supporting a foreign disaster relief mission or a defense support of civil authorities mission (e.g., Navy judge advocates sortieing out on ships), so they had to be prepared for either. This is where preparation pays great dividends—creating checklists,, keeping an SJA running estimate (CLAMO OpLaw Quarterly, 17-3, pgs. 8-11), maintaining a good Smart-book for deployers, and quickly establishing good communication links with the other legal players in an operation.

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K.6—Joint Task Force Base Considerations and Diplomatic Notes

Observation: During a typical foreign disaster relief operation, the Joint Task Force Headquarters should be at a location near the affected country, and the Joint Task Force Forward Element should be co-located with the Office of United States Foreign Disaster Assistance staff in the affected country.

Discussion: DoS will lead negotiations with foreign governments on these matters, but more advanced planning by DoD would alleviate some of the last minute, ad hoc island hopping Joint Task Force-Leeward Island undertook in order to provide Foreign Disaster Relief support. For example, when it became obvious Hurricane Maria would cause severe damage to Puerto Rico, the Joint Task Force staff literally just pulled out a map and started making phone calls, as an agreed upon contingency HQ had not been adequately planned for. DoD needs more pre-planning for Foreign Disaster Relief Joint Task Force basing and more agreements in place with Caribbean countries. The most significant input DoD has into the DoS negotiations on basing is probably on Joint Task Force facility requirements and recommendations on the location of HQ/FWD bases. Some issues emanating from Joint Task Force–Leeward Island operations for consideration follow.

Puerto Rico is a good staging base because of Air NG facilities there, but it is also vulnerable, as this hurricane season revealed. SOUTHCOM planners knew Hurricane Maria would hit Puerto Rico when the decision was made to base the HQ there, but the extent of the damage was hard to predict so SOUTHCOM accepted the risk. However, one of the risks that did not get adequate attention, and one which DoD probably dodged a bullet on, was the optic of USMC personnel evacuating from Puerto Rico in order to support a foreign country, all while Puerto Rico was in the beginning stages of a challenging response themselves. The Joint Task Force Public Affairs Officer did create a well thought out, synchronized message regarding this exfiltration. But notwithstanding, given how the politics of the DSCA Puerto Rico response intensified, DoD is fortunate that the public or media did not direct more scrutiny toward the Joint Task Force when leaving Puerto Rico to provide relief to Dominica.

Having the Joint Task Force HQ outside of the affected mission country alleviates these requirements for the staff and personnel who do not need to physically travel to the mission country. So in a lot of ways staging in a nearby country, as in Puerto Rico or Martinique, allows for a lighter footprint, eases manpower requirements, and creates a close logistics hub. Even if the Joint Task Force HQ is in a nearby country, there will still be a sizeable FWD element in the mission country. If a decision is made that arms are required for FWD personnel then that needs to be contained within Diplomatic Notes. For Joint Task Force-Leeward Island, the French side of St. Maarten required security, but it was especially difficult to get licenses for arms, which they required. The Dutch side was more secure and the Dutch allowed arms without much negotiation. Eventually on the French side, the French asked for a list of armed personnel, their passport numbers, and their weapons serial numbers. They provided a verbal approval subject to receipt of the list, and the SJA sent the list through DoS channels.

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Once again, this is a DoS function with the Joint Task Force staff providing input, but Judge Advocates end up being the chief liaison with DoS. The French were hardest to procure Diplomatic Notes from because all matters had to be negotiated back in Paris through the U.S. Embassy. There is also an odd political dynamic between local island government authorities and officials back in Paris. They do not always see eye to eye. After a few days of operations, the Joint Task Force did get formal Diplomatic Notes for St. Maarten and they allowed for armed personnel. On Guadeloupe and Martinique, which were French territories that the Joint Task Force used as staging areas for Foreign Disaster Relief operations into Dominica, the access/arms process worked smoother, but formal Diplomatic Notes were never finalized. Before the Joint Task Force arrived in Martinique, traveling from Puerto Rico and Curaçao, the Joint Task Force presented a list (compiled by the J1 and coordinated with the U.S. Embassy in Paris via the Joint Task Force-Leeward Island Political Advisor (POLAD)) of all personnel entering Martinique with weapons, the corresponding weapons serial numbers, and passport numbers. Perhaps Joint Task Force-Leeward Island Judge Advocates could have elevated the Diplomatic Notes issue higher, but repeated attempts were made and it just was not enough of a priority, so operations had to proceed without finalized Diplomatic Notes. Verbal and informal emails confirming Diplomatic Clearance (DIPCLEAR) create uncertainty in operations. For example, when the USNS Spearhead arrived off-shore and their staff asked for a physical copy of their authorities to be in Martinique and Guadeloupe, the Joint Task Force-Leeward Island SJA was only able to provide verbal confirmation that the Joint Task Force was authorized to be in the Joint Operating Area in order to transport personnel and equipment. Another Diplomatic Notes related problem arose when the Joint Task Force COOP'ed in Curacao (Dutch lower Caribbean region) after Hurricane Maria hit Puerto Rico. Curacao was chosen because of access and due to its location out of the path of any potential storms. But there were no permissions from the Dutch to actually provide Foreign Disaster Relief support from Curacao. It was not apparent until the HQ set up on Curacao that the United States did not have the authority to do anything except counter-drug operations. Joint Task Force-Leeward Island staff attempted to broker a compromise, but DoS was adamant that the Dutch had not provided permission to conduct Foreign Disaster Relief operations out of Curacao and it would take too long, or they were unwilling, to agree to official Diplomatic Notes with these permissions (even though the Dutch were one of the recipients of Foreign Disaster Relief support). Hence, the Joint Task Force had to engage in rapid ad hoc planning once again in order to find a staging area (the distance between Curacao and Dominica was also a factor). Several countries did make it known they would allow access, so basing options became available quickly.

The communication issues between the Office of United States Foreign Disaster Assistance and the Joint Task Force might have been alleviated if their HQs were co-located. Not only was the Joint Task Force-Leeward Island HQ in Puerto Rico, while the Office of United States Foreign Disaster Assistance Disaster Assistance Response Team (DART) was on the ground in St. Martin/St. Maarten, but the Joint Task Force-Leeward Island FWD was not even at the same location as the Disaster Assistance Response Team. Joint Task Force-Leeward Island and Disaster Assistance Response Team leadership just did not spend enough time together. All of the interaction was via e-mail and phone. The situation was rife for disconnects and contributed to inadequate Liaison Officer alignment (though at the action officer level, or the tactical level of execution, the Office of United States Foreign Disaster Assistance and the Joint

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Task Force worked well together). Having the Office of United States Foreign Disaster Assistance and Joint Task Force staff work together is very important because although the Mission Tasking Matrix process might seem straightforward, in reality it tends to be complex. Requests can change quickly, times can change, and in general information is fluid/incomplete. When co-located and sitting next to each other, these little changes are workable, when you pull those functions apart it adds time to the coordination process.

Recommendations: Based on the above considerations, during a typical FDR operation the Joint Task Force HQ should be at a location nearby the affected country and the JTF FWD element should be co-located with the Office of United States Foreign Disaster Assistance the Office of United States Foreign Disaster Assistance staff in the affected country. The SJA needs to be a player in recommending co-location with the Office of United States Foreign Disaster Assistance staff, as he/she is in a strong position to explain Mission Tasking Matrix coordination problems that occur when the staff is not co-located. Ideally Diplomatic Notes with potential FDR staging countries would be in place in advance of operations. They could still be structured so as to not be activated without host nation approval. That is the SOUTHCOM desired end state. But as the process is not that refined/mature yet, Judge Advocates in Foreign Disaster Relief operations need to sync with DoS during staging negotiations in order to clarify Joint Task Force requirements and anticipate issues that could impact operations (e.g., arming, security, nature of permissions).

K.7—Rules of Engagement and Arming Considerations

Observation: Absent unusual circumstances or a truly non-permissive environment, judge advocates should advise that the military's limited, supporting role in a foreign disaster relief/foreign humanitarian assistance operation is best accomplished with a light security posture.

Authority(ies): CJCSI 3121.01B (Standing Rules of Engagement/Standing Rules for the Use of Force)

Discussion: Foreign disaster relief is performed to assist other countries in saving human lives. The Joint Task Force Commander should ensure that all military personnel are safe. However, ensuring their safety does not mean that all military personnel should be armed nor is such required by CJCSI 3121.01B. It is acceptable to have a Quick Reaction Force (QRF) or to rely on host nation law enforcement for security if they can provide it. Judge advocates should assist the Joint Task Force Commander in understanding that assuming certain risk on the Rules of Engagement is what the other stakeholders and the host nation are expecting from the U.S. military. Arming all military personnel can undermine the strategic goals of foreign disaster relief. After the force protection plan is decided upon, then the judge advocate facilitates by liaising with the Department of State to ensure the proper Diplomatic Notes/approvals for arms are present and by training on rules of engagement. The goal of a judge advocate supporting foreign disaster relief should be to facilitate approval/Diplomatic Notes, identify personnel to be armed, and have permits in their hands prior to deployment into the affected country.

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The Rules of Engagement developed for Joint Task Force Leeward Islands personnel were very basic. Those rules were also the same rules that the Special Purpose Marine Air-Ground Task Force had been operating under in Honduras for the previous five months (e.g., no collective self-defense, no defense of property). These were the typical Rules of Engagement for a foreign humanitarian assistance/foreign disaster relief mission. Thus, all Special Purpose Marine Air-Ground Task Force personnel had received training on the Rules of Engagement specific to the mission in Honduras. Roughly 90% or more of the Joint Task Force Leeward Islands personnel were part of the Special Purpose Marine Air-Ground Task Force. Furthermore, since the Joint Task Force Leeward Islands Headquarters was first in Puerto Rico versus in Martinique, the judge advocates did not review the Rules of Engagement training for all staff as required. The judge advocates did provide briefs on the Rules of Engagement to personnel leaving from the headquarters into the mission countries. Rules of Engagement briefs were also included in the confirmation briefs given to personnel prior to any new Mission Tasking Matrix or major Joint Task Force movement. Personnel undertaking missions within the affected countries were also provided Rules of Engagement cards tailored to SOUTHCOM/Foreign Disaster Relief.

Recommendations: For Joint Task Force Leeward Islands, the matters regarding arming authority and the Rules of Engagement were handled well with no legal or policy issues arising. Judge advocates have the ability to shape the initial rules of engagement and force protection decisions. Absent unusual circumstances or a truly non-permissive environment, the goal should be to advise that the military's limited, supporting role in a foreign disaster relief/foreign humanitarian assistance operation is best accomplished with a light security posture.

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L: MISCELLANEOUS QUESTIONS AND ANSWERS

Note: Below are additional questions that were asked during the 2017 disaster response. While the fact patterns did not lend themselves to an in-depth discussion in this publication, the answers will enable judge advocates to provide consistent, accurate, and timely answers to unfamiliar issues.

Q: Can we use Unmanned Aircraft Systems?

A: See paragraph 4.o of DoDD 3025.18 Defense Support of Civil Authorities (DSCA).

No, unless SECDEF approval is received. Exception: DEPSECDEF Policy Memorandum 15-002 allows for use of UAS in support of SAR with NORTHCOM approval.

Q: Can media embark on USN/USMC helicopters?

A: See DoD 4515.13-R, Air Transport Eligibility, Chapter 3, and DoDI 5435.2 Delegation of Authority to Approve Travel In and Use of Military Carriers for Public Affairs Purposes

Yes. Per the DoDI, when traveling within one geographic AOR, the COCOM Commander or their designee is authorized to approve and provide dedicated airlift or blocked seats for non-government personnel and accredited media aboard already scheduled flights. The travel must primarily be in the interest of the DoD and enable coverage of operations or PA activities supporting current operations subject to the specified conditions.

Q: Can civilians embark on Navy ships?

A: Yes. See paragraph 3. b. of Office of the Chief of Naval Operations Instruction 5720.2M which states “Nothing contained in this instruction diminishes the authority of the senior Naval Operational Commander present to embark individuals in the public interest or for humanitarian reasons.” Depending on the facts and/or situation, United States Fleet Forces Command may give specific direction; ensure you’re keeping United States Fleet Forces Legal in the loop.

Q: When NG are operating in SAD outside of their State, how can they determine whether their license to practice healthcare is recognized by the receiving State?

A: Qualified NG Military HealthCare Professionals (MHCPs) operating in State Active Duty pursuant to an Emergency Management Assistance Compact may have their medical licenses recognized in the relevant jurisdiction (drawing from Article VI of Model Emergency Management Assistance Compact); however, the relevant Emergency Management Assistance Compact needs to be referenced to determine whether it covers medical practice, and what, if any conditions or restrictions apply to the scope of practice. When operating in State Active Duty status, the supporting State must look to the receiving State’s Emergency Management Assistance Compact and any accompanying State laws, Executive orders or conditions to determine restrictions or scope of practice.

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Q: How are out-of-State Military HealthCare Professionals credentialed?

A: In addition to having a valid license, a Military HealthCare Professional must have privileges to practice in specific medical disciplines at a designated location. Privileges set forth the Military HealthCare Professionals' authorized scope of activity. Military HealthCare Professionals are credentialed at their home Military Treatment Facility (MTF).

When operating outside of their jurisdiction, Military HealthCare Professionals must be granted privileges. When supporting a fixed DoD facility, the Military HealthCare Professional receives privileges from the supported Military Treatment Facility commander. A Military HealthCare Professionals serving in the field is granted privileges by the Task Force - Medical Commander. The Military HealthCare Professional is responsible for providing Inter-facility Credentials Transfer Brief (ICTB) to the receiving privileging authority. Some private medical facilities grant privileges directly to Military HealthCare Professionals. DoD would likely need a Memorandum of Agreement with the facility through which the Military HealthCare Professionals would be granted privileges. Military HealthCare Professionals should be covered under the facility's malpractice insurance coverage.

Q: What provisions under the U.S. Virgin Island's Code applies to out-of-State healthcare providers?

A: Under section 1056 of Title 23 of U.S. Virgin Island Code (VIC), "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."

Q: Does status State Active Duty v. T32 impact medical malpractice coverage?

A: Yes. IAW 28 USC 2671, Military medical practitioners performing duties under 502 may be covered by the Federal Tort Claims Act for medical malpractice claims arising from treatment provided within the course and scope of their employment. Military medical providers performing duty under State Active Duty through the Emergency Management Assistance Compact will be extended the same liability coverage as provided under State law to emergency response medical personnel of the receiving State while responding to a State domestic emergency.

Q: Does the Health Insurance Portability and Affordability Act (HIPAA) apply?

A: The Health Insurance Portability and Affordability Act may or may not apply, depending upon whether one is a Covered Entity or Business Associate. Assuming that the Health Insurance Portability and Affordability Act does apply, Military HealthCare Professionals and HealthCare Professionals may share patient information as necessary to provide treatment; to identify, locate and notify family members, guardians, or anyone else responsible for the individual's care of the individual's location, general condition, or death; or to prevent or lessen a serious and imminent threat to the health and safety of a person or the public -- consistent with applicable law and the provider's standards of ethical conduct.

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Q: Can fuel procured with appropriated funds be used for NG vehicles currently being operated by the members in their State Active Duty status?

A: Yes. Typically, fuel is a State expense (the United States Property and Fiscal Officer sends it out with a full tank and expects it to return with a full tank.). However, the United States Property and Fiscal Officer can set up a method to track the fuel costs, and the State will technically reimburse later. Alternatively, the DOD Financial Management Regulation has a 'with fuel' rate that would remove the need to track the fuel used by NG members while serving in their State Active Duty status. Also, the State may go to the Federal Coordinating Official to coordinate for fuel, and Federal Coordinating Official may then provide a Mission Assignment to the State's NG for fuel supply from State Guard to the supported State.

Q: Is the NG authorized to transport prisoners?

A: It depends. FEMA will provide a MA to the Federal Coordinating Official. ESF 13 has responsibility for that function through the U.S. Marshals Service, FBI, and/or Federal Bureau of Prisons. If that is not an acceptable sourcing solution, the FEMA Mission Assignment can go to DoD for sourcing to either T10 or NG. NG might be able to transport prisoners in a T32 status if it is valid training (validated by G3/J3/A3 per CNGB 502f1b authorization) but other issues such as liability, Federal Tort Claims Act, passenger eligibility, and Federal Aviation Administration prohibition of firearms on aircrafts would need to also be considered.

Q: What is FEMA's sustainment plan for Emergency Management Assistance Compact NG forces in the absence of the supported State's capability to provide the same?

A: FEMA can issue expedited funding to the grantee to support the requested logistics requirements. In the case of the U.S. Virgin Islands, the grantee was the Virgin Islands Emergency Management Agency. FEMA writes a project worksheet which includes the statement of work detailing what the funding may be used for, a list of what is needed, and a cost associated with requirements. The funds are then transferred to the Virgin Islands Emergency Management Agency as the grantee. The supported State's Office of the Adjutant General (State/Territorial Military Department) must submit a request to the Virgin Islands Emergency Management Agency in order for the Virgin Islands Emergency Management Agency to disburse those funds to the Office of the Auditor-General. The Virgin Islands Emergency Management Agency then sets up a Federal budget for these funds and will be able to post checks from that budget. To access these funds, the supported State's Office of the Auditor-General must provide supporting documentation to substantiate a drawdown of funds. The Office of the Auditor-General will request support through the Property & Procurement Office in the supported State. State/territorial procedures for procuring supplies and services are used by the purchasing and procurement department. The checks will be issued to the Office of the Auditor-General which will make the purchases and then submit verification of the funds spent in the form of copies of purchase orders, invoices, etc.

Q: What if I would like to give in support of victims of a hurricane?

A: DoD employees interested in providing financial assistance may use FEMA's website to learn more about how to assist (<https://www.fema.gov/volunteer-donate-responsibility>). DoD employees may also donate to organizations assisting with hurricane recovery efforts through the

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Combined Federal Campaign. All persons may also contact the National Voluntary Organizations Active in Disaster (NVOAD). Interface with non-Governmental Organizations (NGOs) as well as with companies in the private sector is a formal part of the National Incident Management System (NIMS). National Voluntary Organizations Active in Disaster is a consortium of approximately 50 national organizations and 54 State/territory equivalents. The organizations in the consortium share knowledge and resources throughout the disaster cycle (preparation, response, and recovery) to help disaster survivors and their communities. From an operational perspective during a disaster, National Voluntary Organizations Active in Disaster typically sends reps to the DHS/FEMA National Response Coordination Center (NRCC) to represent the voluntary organizations and assist in response coordination. The web page for National Voluntary Organizations Active in Disaster provides great info for anyone wishing to help (<https://www.nvoad.org>).

Q: What are legitimate training activities that members of the National Guard may perform that may also provide ancillary support to operational missions or activities, including disaster response?

A: DoDI 1215.06 recognizes that training activities undertaken by the Reserve Components may support Federal operations or missions so long as the training missions are legitimate. In their status under 32 U.S.C. § 502(a) (normal drilling status), members of the National Guard may perform 1) inactive duty training/annual training (IDT/AT) activities that provide ancillary support to an operational mission and 2) DCSA training in accordance with NGR 350-1 for those units assigned a DCSA mission. When operating in their status under 32 U.S.C. § 502(f), NG members may perform mission assurance activities which are any and all actions necessary or appropriate to safeguard Federal resources provided to the National Guard (property, equipment, information etc.). In the status, the members may also perform training or other duty (other than IDT/AT) that provides an ancillary benefit to an operational mission. Examples include a no-notice mission essential task list (METL) training assembly for individuals or units which may also provide incidental benefit to an operational mission (medical support, force protection activities, aviation proficiency, etc.).

State National Guard units must ensure that NGR 350-1 and ANGI 36-2001 are followed with regard to changes or amendments to their training plan. National Guard members already in a duty status (e.g., full-time National Guard duty-operational support (FTNGD-OS) or FTNGD active guard and reserve (FTNGD-AGR)) may provide ancillary support IAW CNGBN 1401. However, National Guard personnel will not be placed in or extended in Title 32 status to conduct State Immediate Response activities. Finally, performance of these training activities does not preclude members of the National Guard from performing Immediate Response activities IAW DoDD 3025.18.

Q: When a technician is ordered to serve in State Active Duty status, may that technician be placed on Law Enforcement Leave (LEL)?

A: It depends on what duties that technician will be performing. As an overview, when you order a technician into SAD status with other members of his/her responding unit, the technician may elect one of the following types of leave to cover his/her absence: annual leave (AL), leave without pay (LWOP), comp time/leave, or the 22 days of leave provided under 5 USC 6323(b),

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also known as Law Enforcement Leave. Military leave (120 hours) under 5 USC 6323(a) may not be used while on SAD. Also technicians will not use sick leave or excused leave (admin leave) to perform SAD.

Law Enforcement Leave may only be used when the technician is actually “providing military aid to enforce the law or for the purpose of providing assistance to civil authorities in the protection or saving of life or property or the prevention of injury.” (5 USC 6323(b)) Thus, a technician can be put on Law Enforcement Leave for work such as participating in rescue work, firefighting, or putting sand into bags. The State Active Duty orders should state why the technician is on Law Enforcement Leave orders (e.g., rescue work, firefighting, reinforcing a levee). More information on this subject may be found at Technician Personnel Regulation (TPR) 630, Chapter 9.

Q: May homeland response force (HRF) personnel already in a 32 U.S.C. § 502(f) FTNGDOS status deploy out-of-State on the same set of orders for non-primary HRF purposes?

A: No. The service members must have a break in orders and then either receive a new set of orders under 32 U.S.C. § 502(f) or be placed in a State active duty (SAD) status. In accordance with the proper policy, 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. 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. Commanders will not amend/curtail or divide for multiple periods for any 32 U.S.C. 502(f) order for the purpose of avoiding pay for typical non-duty days.”

Q: Do the United States Property and Fiscal Officers (USPFO’s) have any duties and responsibilities during DSCA operations?

A: Yes. Because United States Property and Fiscal Officers must account for all Federal property and funding in the possession of their State’s National Guard, it is essential that the United States Property and Fiscal Officers have access to timely and accurate information at all times; even during a DSCA operation. The United States Property and Fiscal Officer position is defined by a statute [32 U.S.C. § 708 (Property and Fiscal Officers)], and further implemented by policy and regulation [DoDI 1200.18 (The USPFO Program); NGR 130-6/ ANGI 36-2 (United States Property and Fiscal Officer Appointment, Duties, and Responsibilities)]. The oversight responsibilities of United States Property and Fiscal Officers are shaped by the complex statutory and regulatory structure of contract and fiscal law. The United States Property and Fiscal Officers represent the CNGB in each State in all matters relating to Federal funding and property procured with Federal funds.

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Q: May the Captain of the Port have Coast Guard vessels physically move unoccupied vessels blocking a Federal channel?

A: 50 U.S.C. § 192 and 33 U.S.C. § 1232 provide the Captain of the Port with broad authority. An implementing regulation is located at 33 CFR § 6.04-8 which provides that the Captain of the port may supervise and control the movement of any vessel and shall take full or partial possession or control of any vessel or any part thereof, within the territorial waters of the United States under his jurisdiction, whenever it appears to him that such action is necessary in order to secure such vessel from damage or injury, or to prevent damage or injury to any vessel or waterfront facility or waters of the United States, or to secure the observance of rights and obligations of the United States. Therefore, vessels blocking a Federal channel that meet the criteria above may be moved. It should be noted that the movement of a vessel by the Coast Guard should be avoided if possible due to risk of liability incurred for taking such action. Having the owners move vessels voluntarily or the issuance of Captain of the Port Orders directing the movement of vessels is the preferable course of action.

Q: May the active or reserve component accept donations of food, supplies, fuel, or other items from individual civilians or private companies while providing civil support?

A: Here, the best course of action is to thank the source for their generosity but not accept the gift. Even though acceptance of a gift may be permitted by a regulatory exception, it is never inappropriate and frequently prudent for a service member to decline a gift offered by a prohibited source or because of the appearance that the gift was offered to a small group on the basis of official position or rank. Also note that, while an acceptable gift may initially seem harmless and in good spirit, the giving may quickly grow to an unintended, unacceptable level which may, by that time, have much greater second and third-order effects when the service-member attempts to reject the gift after having accepted them previously. Direct all potential donors to the State Department of Emergency Management. They will be able to point the persons in the right direction where their gifts are actually allowed. (Appendix N)

Q: May the active component service-member use a DFAC located on a National Guard base or vice versa when providing civil support?

A: If the service-member is collecting per diem while providing civil support, then any meal provided by the Government must be accounted for. In this instance, the rule is no different than it would be regularly which is, a service-member may not collect per diem for a meal and then receive a free meal provided by the Government. If the service member is paying for the meal at the DFAC but at a reduced rate, then the same must be accounted for. The Defense Travel System is specifically set up to address this issue. Also consider whether meals ready to eat (MREs) were purchased and provided for the service member. All of these matters must be considered when attempting to answer this question.

Q: May foreign sovereigns provide assistance to civil authorities during a major disaster?

A: Possibly. There were a number of foreign governments who sought to lend support to TX during the Hurricane Harvey response. This foreign involvement raised a host of issues, operationally and legally. Each volunteer force came with its own challenges, but perhaps the most challenging was the Singaporeans who were in Texas pursuant to a training agreement with the United States. The President of the United States approved their assistance in the operation.

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However, guidance was not passed to the Department of State, the Department of Homeland Security, the Department of Defense, nor the State of Texas. The necessary guidance included the President's intent on employment of the Singaporean forces (C2, logistics, etc.). As a result, there was confusion in light of the fact that there was no existing agreement between the Government of Singapore and the United States outlining such support. In addition, the Texas NG staff was concerned with the Singaporean forces' ability to execute these missions safely. This concern was fueled further when the Singaporean forces, taking direction from the Singapore Minister of Defense, landed 4 Chinooks at an airfield near Houston. Because other usage of Singaporean helicopters had already been preapproved in a governing U.S. State Department Status of Forces Agreement, Texas was able to incorporate the Singaporean assistance under that agreement. Ultimately, the Texas National Guard used the Chinooks to support an existing mission assignment, and mitigated any safety concerns by limiting the Singaporean Chinooks to flying one at a time with their pilot accompanied by one of the Texas instructors at all times.

The process to staff such a request, first, ensure open discussion between the active and reserve component judge advocates about this matter. Second, the Governor's office must route requests for aid from foreign sovereigns through the U.S. Department of State's Crisis Management Office (CMO) (crisismanagement@state.gov; 202-647-7640). The Crisis Management Office reviews offers, determines whether to accept proposed aid, then relays to FEMA for coordination.

In similar fashion to the above, a Texas lobbyist inquired as to whether Texas could utilize UK military reservists as part of the recovery effort. The Texas Air National Guard notified the Governor's office of the request and provided them instructions on how to process the request through proper channels. Note that the assistance provided by the foreign sovereign does not fall under a commander's Immediate Response Authority nor DSCA. Why? Because the foreign commanders are not governed by DoD regulations. Liability is a matter that must be addressed. Thus, if there is nothing in place, contact the Governor's office to draft liability waivers and have them signed before the foreign government begins to provide assistance. Just like any T-10 assistance provided, funding, status of forces agreements, diplomatic notes, country-specific rules and operational constraints, logistics, and command and control must be addressed and integrated into the total plan. Lastly, prior to and after disasters impacting the Caribbean Islands, the U.S. Northern and Southern Commands should establish communications, especially between State Foreign Policy Advisors, to ensure that these issues are spotted in advance.

Q: May members of the National Guard from a supporting State carry their personal concealed weapons while providing civil support in a supported State?

A: If the members of the National Guard will be serving in their State Active Duty status, then the answer is not the same for all States. The Emergency Management Assistance Compact between each State supported by the guidance provided by the State's Adjutant General will govern. However, if the personnel seeking to carry their personally owned firearms will also be performing law enforcement functions in the supported State while in a T-32 or T-10 status, then

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the answer becomes much clearer. NGR 500-5/ ANGI 10-208, paragraph 5-6 states, “National Guard personnel providing law enforcement support will not possess or use non-issued or personally owned firearms or ammunition while in a Title 32 or Title 10 status. The only weapons authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status are federally owned military weapons listed on the unit’s property books. The only ammunition authorized for use in domestic law enforcement support operations while in a Title 32 or Title 10 status is ammunition issued through the military supply system.”

Q: May members of the National Guard receive tuition reimbursement when they must leave class due to being placed on SAD orders to support disaster response?

A: It depends. The laws of each State will govern. For instance, in Texas, Texas Education Code §54.006 states that, in pertinent part, “any member currently enrolled in a public technical institute, public junior college, public senior college or university, medical or dental school, or public State college may either (1) withdraw from school and receive a refund or (2) be excused from absences due to active military service.”

Q: May U.S. Marines use a private building or facility for DSCA response operations (at no charge to the USG)?

A: The Anti-Deficiency Act generally prohibits receiving voluntary benefits that augment appropriated funds. However, it is not a violation to accept gratuitous services where an advanced written agreement is executed that (1) states that the services are offered without expectation of payment, and (2) expressly waives any future pay claims against the government (Government Accountability Office Decision B-324214). Unless specifically excepted by Federal law or DoD policy, form of payment also includes any non-monetary benefits such as public advertisement or endorsement by the DoD or its personnel. In this particular instance, Google/Loon offered the 26th Marine Expeditionary Unit use of their facility and hangar at the Jose Aponte De La Torre Airfield to support relief efforts. During DSCA operations, short-term leasing may be a necessary option depending on location and duration. No occupation of private land or facilities is authorized without specific legal authority. Real property support may be obtained from the General Services Administration (GSA), US Army Corps of Engineers, Naval Facilities Engineering Command, Air Force Civil Engineer Center, or other USG departments and agencies. The offer from Google/Loon to gratuitously use the facility constitutes specific legal authority; consent is legal authority. The usage does not give rise to an unauthorized trespass or non-consensual occupation. However, the Anti-Deficiency Act generally prohibits receipt of voluntary benefits that augment congressionally appropriated funds. Moreover, pursuant to Joint Publication 3-28 (DSCA) specifically clarifies that, “DoD forces [conducting DSCA] will rely on DoD facilities for support to the maximum extent possible.” However, it is not a violation to accept gratuitous services where an advanced written agreement is executed that (1) states that the services are offered without expectation of payment, and (2) expressly waives any future pay claims against the government (Government Accountability Office Decision B-324214).

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M: ACRONYMS, TERMS, AND DEFINITIONS

Note: Some of the acronyms used in disaster response may directly conflict with the terms recognized by the DoD in the April 2018 edition of the DoD Dictionary of Military and Associated Terms. For example, in the DoD Dictionary of Military and Associated Terms, the acronym “ICP” is accepted to mean Inventory Control Point and Intertheater Communications Security Package. However, in the October 2017, third edition, of the National Incident Management System, issued by FEMA, the acronym “ICP” is accepted to mean Incident Command Post. The various acronyms and terms that judge advocates may encounter when performing Defense Support of Civil Authorities (DSCA) or National Guard Civil Support (NGCS) are listed below for your reference and use. Some of the acronyms and terms are the same as listed in the DoD dictionary and some are different.

Activation	An order to active duty, for units and individuals (other than for training) in the Federal service pursuant to statutory authority granted to POTUS, Congress, or the service secretaries. Reservists can be activated involuntarily or voluntarily with their consent (Guardsmen also need the consent of their governor).
ADCON	Administrative Control
Anti--Deficiency Act	Prohibits any government officer or employee from making or authorizing an expenditure or obligation in advance of or in excess of an appropriation, making or authorizing an expenditure or incurring an obligation in excess of a formal subdivision of funds, or in excess of amounts permitted by regulations prescribed under 31 USC 1514(a); or from accepting voluntary services, unless authorized by law.
Arming Orders	State of preparedness to use force; NOT the AUTHORITY to use force once a member is faced with a threat.
BTM	Boarding Team Member
BUMEDINST	Bureau of Medicine and Surgery Instruction
C2	Command and Control
C3	Command, Control, and Communication
CAISE	Civil Affairs Information Support Element
CAP	Civil Air Patrol (Appendix M)

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CCDR	Combatant Commander
CERT	Community Emergency Response Team. One of the coordinating structures in the National Response Framework (NRF) to aid preparedness and response.
CJCS	Chairman, Joint Chiefs of Staff
CNGB	Chief of the National Guard Bureau
CNGBI	Chief of the National Guard Bureau Instruction
CNGBM	Chief of the National Guard Bureau Manual
COCOM	Combatant Command
COMCAM	Combat Camera
COP	Common Operating Picture
CSG	Carrier Strike Group
CST	Civil Support Team. Civil Support Teams (CSTs) are a part of each State's National Guard and are frequently called out to investigate suspicious substances that are discovered in the course of other organizations' routine activities, such as during a response by the police or in mail handling by the Post Office.
CUSFFC	Commander, United States Fleet Forces Command
DCE	Defense Coordinating Element. Consists of a staff and military liaison officers in order to facilitate coordination and support to activated Emergency Support Functions (ESFs). The DCO has a DCE of core staff and military Liaison Officers to facilitate coordination and support to activated ESFs.
DCO	Defense Coordinating Officer. The DCO, a Title 10 Active Duty officer appointed by the DoD, is assigned to each FEMA region and may work at the Regional Response Coordination Center, at the FEMA regional office, or may pre-deploy to an incident command site. A DCO will generally be involved in DoD's response to DSCA. If Federal military forces deploy, the DCO will normally deploy to the Joint Field Office (JFO) location. The DCO coordinates DoD support to the Primary Agency. The DCO serves as DoD's single POC at the JFO for the Unified Coordination

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Group (UCG). With few exceptions, DSCA requests originating at the JFO will be coordinated with and processed through the DCO. The DCO may have a Defense Coordinating Element (DCE). Responsibilities include processing requirements for military support, forwarding mission assignments to the appropriate military organizations through DoD---designated channels, and assigning military liaisons, as appropriate, to activated Emergency Support Functions (ESFs). DoD has assigned DCOs at each of the ten DHS/FEMA regions. The DCO validate mission assignments, identifies emerging Title 10 requirements, and determines transition criteria with lead Federal agency (LFA). The DCO also has liaison officers (LNOs) with the dual status commander (DSC) for situation awareness and coordinated actions.

DI	Domestic Imagery. “Any imagery collected by airborne platforms and satellites (national or commercial) that cover the land areas of the 50 United States, the District of Columbia, and the territories and possessions of the US, to a 12 nautical mile seaward limit of these land areas.” (AFI 14-104). Also see DoDD 5200.27 which further describes DI as, “aerial reconnaissance with imagery over the US that does not involve the intelligence community (IC).”
DIC	Defense Intelligence Component
DILR	Domestic Imagery Legal Review
DoD	Department of Defense
DSC	Dual Status Commander. A DSC serves in both Title 10 and Title 32 capacity, and can therefore serve to better unify the Federal and NG forces involved in the response. The National Defense Authorization Act of 2012 stated that when Federal forces and the NG are employed simultaneously ISO civil authorities, appointment of a DSC should be the usual C2 arrangement. DSCs receive orders from both the State and Federal chains of command, and thus serve as a vital link between the two sides. They can be appointed in one of two ways: an active duty Army or AF officer may be detailed to the Army National Guard or Air National Guard; or, an Army or ANG member may be ordered to active duty. SECDEF must authorize dual status, and the State Governor must consent to the status.
DSCA	Defense Support of Civil Authorities. Support provided by US Federal military forces, DoD civilians, DoD contract personnel,

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DoD component assets, and NG forces (when the SecDef, in coordination with the governors of the affected States, elects and requests to use those forces in Title 32, United States Code, status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

Economy Act

The Economy Act, 31 U.S.C. § 1535 authorizes interagency orders between Federal agencies after consideration of four factors: (1) Funds are available; (2) The head of the requesting agency or unit decides the order is in the best interest of the United States (U.S.) Government; (3) The agency or unit to be asked to fill the order is able to provide the ordered goods or services; and (4) The head of the agency decides that ordered goods or services cannot be provided as conveniently or economically by a commercial enterprise. The ordering agency must reimburse the performing agency for the costs of supplying the goods or services. 31 U.S.C. § 1536 specifically indicates that the servicing agency should credit monies received from the ordering agency to the “appropriation or fund against which charges were made to fill the order.” See also 41 U.S.C. § 6307 (providing similar intra-DOD project order authority, and DOD FMR, vol. 11A, ch.3 (providing policies and procedures for Economy Act orders). Pursuant to 10 USC 377, the support provided between Federal agencies under these authorities is reimbursable under the Economy Act, unless the support is provided in the normal course of training or operations, or the support results in a substantially equivalent training value.

EMAC

Emergency Management Assistance Compact. The Emergency Management Assistance Compact is a non-binding, collaborative, congressionally approved interstate mutual aid compact that provides a legal structure by which States affected by an emergency may request assistance from other States. Signatories to the compact resolve potential legal and financial obstacles that States might otherwise encounter as they provide assistance to the stricken State or States. Since being ratified by Congress and signed into law, in 1996, (Public Law 104-321), 50 States, the District of Columbia, Puerto Rico and the U.S. Virgin Islands have enacted legislation to become members of EMAC. The compact establishes immunities, authorities, and liabilities for missions executed under its authority. It allows the States to rely upon each other in responding to, among other things, emergencies such as man-made or natural disasters, insurgencies, or enemy attack.

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Emergency	Any situation in which Federal assistance is required to save lives, protect health and property, or mitigate or avert a catastrophe. POTUS authority is a little more limited in scope and time for emergencies than for Major Disaster. The Stafford Act authorizes POTUS to declare an Emergency, but not a Major Disaster sua sponte with respect to an emergency that involves an area for which the U.S. exercises exclusive or preeminent responsibility and authority.
Emergency Declaration	The Emergency Declaration is limited in how it can help and does not include long-term Federal recovery programs of a major disaster declaration.
EO	Executive Order
EO 12656	Executive Order 12656. This EO mandates that the heads of Federal agencies plan for continuity of gov't in the event of a national emergency. Provided for the Federal Response Plan (FRP), which has been superseded by the National Response Framework (NRF) under the National Preparedness System (NPS). Assigns national security emergency preparedness responsibilities to Federal departments and agencies.
EO 13618	Executive Order 13618. Directs SecDef to oversee the development, testing, implementation, and sustainment of national security and emergency preparedness communications that are directly responsive to the national security needs of the President, Vice President, and senior national leadership.
EOC	Emergency Operations Center (local or State). EOCs coordinate information and resources for affected local/State government to support incident management activities. EOCs maintain a current operating picture and communications capability with internal and external resources. The EOC is able to take advantage of assets from throughout the jurisdiction to respond to the incident and is activated if first responders are unable to contain an incident at the scene.
EPLO	Emergency Preparedness Liaison Officer. A senior reserve officer who represents their Service at the appropriate joint field office (JFO) conducting planning and coordination responsibilities in support of civil authorities. The EPLO helps coordinate DoD emergency resources and supports the DCO. Maintains a current operating picture and communications capability with internal and

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external resources. The EOC is able to take advantage of assets from throughout the jurisdiction to respond to the incident and is activated if first responders are unable to contain an incident at the scene.

ESF	Emergency Support Function. Part of the National Response Framework (NRF). ESFs are Federal coordinating structures that group resources and capabilities into functional areas that are most frequently needed in a national response. ESFs can identify personnel and resources to support prevention, preparedness, response, recovery, and mitigation operations, as well as how those military resources are to be integrated into disaster response operations. There are 14 ESFs in the NRF.
ESG	Expeditionary Strike Group
EST	Emergency Support Teams. Federal personnel deployed to area of disaster or emergency. EST is principal interagency group that supports the Federal Coordinating Officer (FCO) in coordinating overall Federal disaster assistance.
FCO	Federal Coordinating Officer. The FCO is a senior FEMA official who manages and coordinates Federal resource support activities related to Stafford Act disasters and emergencies. POTUS appoints an FCO after a recommendation by the FEMA Administrator and Secretary of HS. The FCO executes Stafford Act authorities, including committing FEMA resources and giving mission assignments to other Federal departments and agencies. The FCO also plays a significant role in managing the financial aspects of DSCA.
FDRC	Federal Disaster Recovery Coordinator
FEMA	Federal Emergency Management Agency. Under DHS. Responsible for reducing loss of life and property and protecting USA from all hazards (natural, terrorism, man-made).
FEMA Branch Director	A FEMA Branch Director has functional or geographic responsibility for major parts of the Operations or Logistics functions.
FEMA Division Supervisor	A FEMA Division Supervisor is located within the ICS organization between the Branch and the Task Force/Strike Team.

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Divisions are used to divide an incident into geographical areas of operation.

First Responders

Local fire, medical and police personnel under the command of the Incident Commander. The private sector and voluntary organizations provide direct support to affected and host communities through solicited and unsolicited cash and in-kind donations, including goods, services, and skilled and unskilled labor. DHS/FEMA through the American Red Cross (ARC) manages volunteers.

FLIR

Forward Looking Infrared Radar

FMV

Full Motion Video

FOB

Forward Operating Base. An airfield used to support tactical operations without establishing full support facilities.

FRC

Federal Resource Coordinator. The FRC manages Federal resource support activities related to non-Stafford Act incidents when Federal-to-Federal support is requested from DHS by another Federal agency. Requesting agencies will appoint a senior official to work in coordination with the FRC as part of the UCG.

FRP

Federal Response Plan. The FRP has been superseded by the NRF.

GAR

Governor's Authorized Representative. The GAR, who in most cases is also the State Coordinating Officer (SCO) under a Stafford Act response, represents the governor of the State. The GAR/SCO is most often a senior leader in the State's emergency response organization, and is a member of the UCG.

HSI/MSI

Hyper/Multi-Spectral Imaging

HSPD-5

Homeland Security Presidential Directive-5. Directs the Secretary of Homeland Security to develop and administer the National Incident Management System and the National Response Framework.

IAA

Incident Awareness and Assessment. The use of intelligence, surveillance, and reconnaissance Department of Defense (DoD) intelligence capabilities for domestic, non-intelligence activities approved by the Secretary of Defense (SecDef), such as search and rescue (SAR), damage assessment, and situational awareness.

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IC	Incident Commander. The IC is generally the most experienced local responder who remains the IC until voluntarily giving up command or being replaced by a more qualified official. This individual is responsible for all incident activities, including the development of strategies and tactics and the ordering and the release of resources. The IC has overall authority and responsibility for conducting incident operations and is responsible for the management of all incident operations at the incident site. The IC usually answers to the local Mayor.
ICP	Incident Command Post. The field location at which the primary tactical---level, scene incident command functions are performed. May be co-located with incident base or other incident facilities. The Incident Commander or Unified Command is located at the ICP.
ICS	Incident Command System. Part of the National Incident Management System (NIMS). ICS works at the tactical level, organizing on---scene ops.
IMAT	Incident Management Assistance Team. The appropriate Command and General Staff personnel assigned to an incident. The IMAT is located in the JFO and supports the FCO. It works closely with other ESF staffs, branch directors, and division supervisors.
IO	Information Operations
IOF	The first facility from which the IMAT manages incident-level operations. It is a temporary facility until a more suitable facility is secured for the JFO.
IR	Infrared
IRA	Immediate Response Authority. DoD response at the municipal, county, or tribal level is provided under IRA. State have this same authority when seeking to use their National Guards. (DoDD 3025.18, para 4.h) When time does not permit prior approval from higher headquarters, then local military commanders or responsible officials of other DoD components may, in imminently serious conditions and upon request from local authorities, provide support to save lives, prevent human suffering, or mitigate great property damage. For the Federal military, it is important to note that no law enforcement activities are authorized under IRA. The same

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does not hold true for the National Guard in their SAD or T-32 status. Local T10 and NG Commanders have Immediate Response Authority.

ISB

Incident Support Base. A tailorable, temporary location used for staging forces, sustainment and/or extraction into and out of an operational area. In anticipation of an incident occurrence or in the immediate aftermath, FEMA may establish one or more ISBs near the incident area by pre-positioning commodities from a FEMA Distribution Logistics Center in anticipation of requests from State partners. The function of an ISB is to ensure rapid response to a disaster by pre-positioning resources in safe proximity to a disaster impacted area. The FEMA HQ LMD or the Resource Support Section of the National Response Coordination Staff controls ISBs. An ISB may be converted to a staging area after a declaration is made if the ISB is located within the incident boundaries. Once stocked, ISBs primarily distribute resources to FSAs but could send them to a State staging area or to points of distribution when requested. An ISB may also provide temporary support services, such as food and billeting, for personnel before their assignment, release, or reassignment. In addition, the ISB may serve as a place for out-processing following demobilization as personnel await transportation. (Appendix G)

Insurrection Act

The Insurrection Act of 1807 governs the deployment by the President within the United States of Federal military personnel to quell lawlessness, insurrection, and rebellion. The law is intended to circumscribe the President's ability to use military force in enforcing civil law to narrowly defined conditions. Actions taken under the Insurrection Act are exempt from the provisions of the Posse Comitatus Act (PCA). The implementation of the Insurrection Act is allowed when a condition exists that hinders the execution of State and Federal laws within a State.

JDOMS

Joint Domestic Operations and Military Support

JFO

Joint Field Office. The JFO is the primary Federal incident management field structure. It is a temporary facility established locally to coordinate Federal, State, tribal, and local gov'ts, as well as private sector and NGOs, with primary responsibility for response and recovery. JFOs can issue mission assignments. The JFO uses the Incident Command System (ICS) structure but does not manage on-scene ops. Rather, it provides support to on-scene

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efforts and conducts broader support ops that extend beyond the incident site.

JIC	Joint Information Center. The JIC supports the coordination of local, State, tribal, and Federal governments and private sector communications with the public and serves as the media center for press briefings. It is also the central point for coordination of incident information, public affairs activities, and media access to information regarding the latest incident.
JOC	Joint Operations Center. JOC is the focal point for all investigative law enforcement activities during a terrorist or other significant criminal incident. JOC is managed by an FBI Special Agent in Charge (SAC). JFO becomes a component of the JFO when the JFO is established.
JRSOI	Joint Reception, Staging, and Onward Integration. A phase of joint force projection occurring in the operational area during which arriving personnel, equipment, and materiel transition into forces capable of meeting operational requirements. (Appendix G)
JTFC	Joint Task Force Commander. Based on the size and type of incident, a COCOM/CC may utilize a JTF to command Title 10 forces responding to the event. If a JTF is established, its C2 element will be co-located with the Principal Federal Officer (PFO) at the Joint Field Office (JFO) to ensure coordination and unity of effort. A JTF/CC exercises OPCON of all allocated DoD resources (excluding USACE resources, NG forces in State Active Duty (SAD) or Title 32 status, and in some circumstances, DoD forces in support of the FBI). The use of a JTF C2 element does not replace the requirement for a Defense Coordinating Officer (DCO)/Defense Coordinating Element (DCE) at the JFO interfaced with the Unified Coordination Group (UCG). Rather, the JTF command element will work with UCG members to ensure that there is a clear understanding of the roles of military resources involved in the operation.
JTR	Joint Travel Regulations
LDRM	Local Disaster Recovery Manager
LEA	Law Enforcement Agency

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LEPC	Local Emergency Planning Committee. One of the coordinating structures in the National Response Framework (NRF) to aid preparedness and response.
LFA	Lead Federal Agency. In the majority of domestic emergency and disaster response ops, DHS will serve as the LFA to which DoD lends its support.
LOD	Legal Operations Detachment
LSO	Legal Support Office
MA	Mission Assignment. The vehicle used by the Department of Homeland Security/Emergency Preparedness and Response/Federal Emergency Management Agency to support Federal operations in a Stafford Act major disaster or emergency declaration that orders immediate, short-term emergency response assistance when an applicable State or local government is overwhelmed by the event and lacks the capability to perform, or contract for, the necessary work.
MAA	Mutual Aid Agreement. Mutual aid agreements exist between emergency responders to provide assistance across jurisdictional boundaries. (also commonly referred to as Mutual Aid Assistance Agreements)
MACOM	Major Army Command
MACS	Multi-Agency Coordination System. Part of the National Incident Management System (NIMS). MACS coordinates activities above the field level and can be either formal or informal.
Major Disaster	Any natural disaster, fire, flood, or explosion when such acts cause damage of sufficient severity to warrant Federal disaster assistance, as determined by POTUS. Once the POTUS declares a major disaster, long-term Federal recovery programs and response assets under the Stafford Act are triggered. Some of the programs and assets are matched by State programs and designed to help disaster survivors, businesses, and public entities.
MATO	Mission Assignment Task Order. A MATO is used to provide specifics for a broad statement of work (e.g., delivery sites for water); prevents the issuance of multiple mission assignments for the same statement of work; will be prepared to direct specific

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activities within the scope of a mission assignment; may include personnel, resource movement, and locations for delivery and duty stations; the tactical equivalent of the FRAGO where follow on orders/instructions are issued from an original base order (previously existing document that directs an overall action).

MCO

Marine Corps Order

MEU

Marine Expeditionary Unit

MOA/MOU

Memorandum of Agreement/Memorandum of Understanding. Memoranda of Agreement (MOAs) and Memoranda of Understanding (MOUs) establish and arrange mutual aid assistance agreements. When there is a MOA/MOU, its specific nature will be affected by the situation at that given location.

Mobilization

The process of bringing all national resources to a state of readiness for war or national emergency; it includes activated the Reserve Component. Levels of mobilization include selective mobilization, partial mobilization, full mobilization, and total mobilization.

MOC

Maritime Operations Center

National Guard

The National Guard [Army National Guard (ARNG) and Air National Guard (ANG)] is a military Reserve organization that is different from the Federal Reserve component because it belongs to the various States and territories on a day-to-day basis. Members of the National Guard normally serve in either their State Active Duty status (SAD; State funded State controlled) or status under Title 32 of the United States Code (T-32; Federally funded, State controlled). However, the National Guard may also be called to Federal duty ("Federalized") under T-10 of the United States Code (T-10; Federally funded, Federally controlled) [Army National Guard of the United States (ARNGUS) and Air National Guard of the United States (ANGUS)]. (Appendices H, I, and J)

NC DSC JEC

U.S. Northern Command dual Status Command Joint Enabling Capacity. The tailor made Title 10 (T10) staff of the DSC and exercises mission command of T10 forces. Has LNOs with the DCO for situation awareness and coordinated actions.

NCP

National Oil and Hazardous Substances Pollution Contingency Plan. NCP sets out procedures for preventing and responding to

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oil discharges into navigable waters and release of hazardous substances into the environment.

NDAP	Non-DoD Affiliated Person
NDRF	National Disaster Recovery Framework. The NDRF provides guidance to promote effective recovery from incidents. The NDRF introduces four new terms: Federal Disaster Recovery Coordinator (FDRC), State or Tribal Disaster Recovery Coordinators (SDRCs or TDRCs), Local Disaster Recovery Manager (LDRM), and Recovery Support Functions (RSFs).
NECP	National Emergency Communications Plan
NG	National Guard
NGA	National Geospatial Agency
NGB	The National Guard Bureau
NGCC	National Guard Coordination Center
NG--CERFP	National Guard Enhanced Response Force Package. At least one package in each FEMA Region. Provides governors or combatant commander with capabilities to extract victims from a contaminated area, provide patient and casualty decontamination, and perform medical triage. Can operate in SAD, T32 and T10 statuses. (Appendices H, I, and J)
NGO	Non-Governmental Organization
NGCS	National Guard Civil Support. Support provided by the National Guard while in a State Active Duty status or Title 32 status to civil authorities for domestic emergencies, designated law enforcement, and other activities.
NGR	National Guard Regulation
NGT	National Technical Means
NICC	National Infrastructure Coordinating Center. Monitors the Nation's critical infrastructure and key resources on an ongoing basis. During an incident, the NICC provides a coordinating forum to share info across infrastructure and key resource sectors. It is

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both an operational component of DHS and a watch ops element of the NOC.

NIMS	National Incident Management System. The NIMS framework forms the basis for interoperability and compatibility that enables a diverse set of public and private organizations to conduct well-integrated and effective emergency management. It is the system managed by DHS to unify Federal, State, and local gov't efforts to prepare for, respond to, and recover from domestic events. Provides structure and mechanism for establishing national level policy and operational direction regarding Federal support to State and local incident managers.
NMF	National Mitigation Framework. The NMF establishes a common forum for coordinating and addressing how the Nation manages risk through mitigation capabilities.
NOC	National Operations Center. In the event of a disaster/emergency, the NOC acts as the principal ops center for coordinating and integrating info from NOC components to provide situational awareness for the gov't. The NOC also serves as the national fusion center, collecting info on threats and hazards across the entire integrated NPS. The reference to the NOC in the DOPLAW Handbook is to the DHS NOC.
NPF	National Prevention Framework. The NPF provides guidance to leaders at all levels of gov't, private and non-profit sector partner, and individuals, on how to prevent or stop a threatened or actual act of terrorism.
NPS	National Preparedness System
NRCC	National Response Coordination Center. NRCC is a multiagency coordination center located at FEMA HQ. When activated, its staff coordinates overall Federal support for major disasters/emergencies. FEMA maintains the NRCC as a component of the NOC for incident support ops. The NRCC can issue mission assignments.
NRF	National Response Framework. Organizes governmental response to disasters/incidents in US, territories and possessions. NRF is always in effect and can be implemented at any time. NRF is made up of the base document, Emergency Support Functions (ESFs), Support Annexes, and Incident Annexes. The NRF presents the guiding principles that enable all response partners to

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prepare for and provide a unified national response to disasters and emergencies. It establishes a comprehensive, national, all-hazards approach to domestic incident response.

NRIA	Nuclear/Radiological Incident Annex of the NRF
NRP (obsolete)	National Response Plan. The NRP was superseded by the NRF, which is now part of the NPS.
NRT	National Response Team. NRT plans and prepares response actions for National Contingency Plan (NCP).
NTM	National Technical Means
OPCON	Operational Control
OPNAVINST	Office of the Chief of Naval Operations Instruction
OSC	On-Scene Coordinator or On-Scene Commander
PCA	Posse Comitatus Act (18 USC § 1385). Means “power of the county.” Defined in common law to refer to all those over the age of 15 upon whom a sheriff could call for assistance in preventing any type of civil disorder.
PDS	Permanent Duty Station
PFO	Principal Federal Official. The Secretary of Homeland Security is the PFO for coordination of all domestic incidents requiring multiagency Federal responses. Secretary may elect to designate a single field rep to serve as his or her primary representative to ensure consistency of Federal support and overall effectiveness of the Federal incident mgmt.
POD	Point of Distribution. Location where the public comes to obtain emergency supplies following a disaster. The need for a POD is based on lack of infrastructure to support normal distribution of food, water, or other supplies.
PPD-8	Presidential Policy Directive-8. Guidance that seeks to strengthen the security and resilience of the United States through systematic preparation for the threats that pose the greatest risk to U.S. security, including acts of terrorism, cyber-attacks, pandemics, and catastrophic natural disasters.

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Private Sector/Volunteers	The private sector and voluntary organizations provide direct support to affected and host communities through solicited and unsolicited cash and in-kind donations, including goods, services, and skilled and unskilled labor. DHS/FEMA through the American Red Cross (ARC) manages volunteers.
PSMA	Pre-Scripted Mission Assignments. Emergency Support Function (ESF) assignments prepared in advance to facilitate a more rapid response and standardize process of developing mission assignments. Mission assignments are issued from three FEMA---managed entities: Joint Field Offices (JFOs), Regional Response Coordination Centers (RRCCs), and the National Response Coordination Center (NRCC).
PUM	Proper Use Memorandum
RC	Reserve Component. The RC consists of 1) the reserves of the Army, Air Force, Navy, and Marine Corps, and 2) the National Guard [Army National Guard (ARNG) and Air National Guard (ANG)].
REPLO	Regional Emergency Preparedness Liaison Officer. REPLOs are Title 10 Service Reserve personnel assigned to the FEMA regions.
RFA	Request For Assistance. To initiate the IRA, a Request For Assistance must come from some civil authority such as the mayor, chief of police, fire chief, sheriff, chief of emergency management, or tribal authority. This request may initially be made verbally; however, for Mission Assignment tracking and funding purposes, a follow-up in writing is desired.
RFF	Request for Forces. The DCO sends the MA to the NORTHCOM CCDR for approval. The NORTHCOM CCDR approves routine requests that can be executed with her CAT 1-3 units who are at the BSI. If the request is not routine or the NORTHCOM CCDR does not have the units capable of executing the MA, the NORTHCOM staff validates the MA and sends the MA and a Request For Forces (RFF) though the Joint Staff J35 (JS J35) to the SECDEF for approval. If the SECDEF approves the MA, the JS J35 sources the unit through the services and the unit is OPCON to NORTHCOM. The unit deploys to the BSI and reports to the JFLCC-FWD. The T-10 unit that executes the MA is OPCON to the DSC. When the T-10 unit completes the MA to the satisfaction of the IC, they are released to the DSC.

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RRCC	Regional Response Coordination Center. FEMA maintains an RRCC in each of its 10 regional offices. When activated, RRCC's are multi--agency coordination centers staffed in anticipation of or response to an incident. They operation under the direction of the FEMA Regional Administrator. RRCC staff coordinates response efforts and maintains connectivity with FEMA HQ, State EOCs, and other Federal and State coordination centers. The UCG will assume responsibility for coordinating Federal response activities at the incident level once established, freeing the RRCC to address other incidents. RRCCs can issue mission assignments.
RRF	Resource Request Form. If the State cannot resolve a response problem with its own resources, then the State may request Federal resources by submitting a Resource Request Form (RRF) to the FEMA operations officer in the IOF/JFO. FEMA Ops will staff the RRF to find a solution from its own internal assets or from any of the ESFs. If it is determined that a DOD resource is needed to resolve the issue, the RRF will be staffed to the DCE for validation. Once the RRF has been validated, FEMA Ops, in concert with DCE Ops, crafts a Mission Assignment (MA). The SCO and FCO sign the completed MA.
RSF	Recovery Support Function. Six RSFs provided for in the National Disaster Recovery Framework; provides a structure to facilitate problem solving, improve access to resources, and foster coordination. Similar in concept to the Emergency Support Functions (ESFs).
SA	Situational Awareness
SAD	State Active Duty. When the governor of a State mobilizes the National Guard, the forces are typically in State Active Duty (SAD) status under command and control of the governor and paid for with State funds. SAD forces conduct all missions in accordance with the needs of the State and within the guidelines of State laws and statutes. SAD is not the same as the status of National Guard personnel under T-32.
SAR	Search and Rescue. In the information technology context, the acronym SAR stands for Synthetic Aperture Radar.

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SCO	State Coordinating Officer. The SCO is appointed by the governor to coordinate State response and recovery operations with the Federal government. As an incident escalates, the SCO will work with the FCO to formulate State requirements, including those that are beyond State capability.
SDRC	State Disaster Recovery Coordinator
SED	State Emergency Duty; could include National Guard personnel serving in their SAD, T-32, or AGR (Active Guard and Reserve) statuses. (Appendices H, I, and J)
SEOC	State Emergency Operations Center. A physical location at which the coordination of information and resources to support domestic incident management activities takes place and normally located at the State capital.
SEPLO	State Emergency Preparedness Liaison Officer. SEPLOs are Title 10 Reserve personnel who perform duty in the State EOC. As subject matter experts in their States, they serve as DoD liaisons for DSCA to State and Federal agencies and maintain situational awareness within the State. On a daily basis, they build relationships to facilitate mission accomplishment.
SERC	State Emergency Response Commission. One of the coordinating structures in the National Response Framework (NRF) to aid preparedness and response. SERCs manage LEPCs and State Disaster Planning Advisory Committees.
SFLEO	Senior Federal Law Enforcement Official. The SFLEO is the senior LE official from the agency with primary jurisdictional responsibility. SFLEA directs the intelligence and investigative LE ops related to the incident and supports the LE component of the on-scene Unified Command. In the event of a terrorist incident, this will normally be the FBI SAC for incident area.
SI	Sensitive Information
SIOC	Strategic Information and Operations Center. SIOC is the FBI's worldwide EOC. It maintains SA over threats and provides FBI HQ, field offices, and overseas legal attaches with timely notification of strategic info. It shares info with EOCs at all other levels of gov't. It provides C3 and COP for managing FBI responses worldwide. In the event of an incident, the SIOC

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establishes the HQ command post and develops connectivity to field command posts and Joint Operations Centers (JOCs).

SJFHQ

State Joint Force Headquarters. A joint headquarters for the State's Army and Air National Guard forces, normally located in the State capital region.

Stafford Act

42 USC 5121 et seq., implemented in the Federal Acquisition Regulation (FAR) at Subpart 26.2, provides for assistance from the Federal gov't to States in the event of emergencies or natural or other disasters. Stafford Act is the primary legal authority for Federal emergency and disaster assistance to State and local gov'ts. The Act delegated to POTUS emergency powers that may be exercised in the event of a declared major disaster or emergency. Stafford Act assistance is given upon request from a governor when governor certifies that State lacks resources and capabilities to manage incident without Federal assistance. The Act lists roles and responsibilities and outlines types of assistance States may receive. POTUS may provide accelerated Federal assistance in absence of governor's request where necessary to save lives, prevent human suffering, or mitigate severe damage as long as prompt coordination with the State occurs. FEMA is the Lead Federal Agency for Stafford Act responses. FEMA's actions generally driven by requests from State/local governments. Authorizes POTUS to appoint Federal Coordinating Officer (FCO); requests governor designate State Coordinating Officer (SCO). The Act also authorizes POTUS to establish Emergency Support Teams (ESTs).

TACON

Tactical Control

TAG

The Adjutant General. This military officer is part of either the Army or Air National Guard and serves as the commanding general of that State's guard as well as a member of the Governor's cabinet. In the case of the National Guard for the District of Columbia (DCNG), there is no Governor. Instead, there is a Commanding General (a 2-Star General Officer) appointed by the President of the United States. This person directly liaisons with the SecDef on matters concerning the DCNG. Also appointed is a TAG (a 1-Star General Officer) who works for the Commanding General.

UAS

Unmanned Aircraft System

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UCG	Unified Coordination Group. This group is comprised of senior leaders from Federal and State interests, and in certain circumstances, tribal gov'ts, local jurisdictions, and the private sector. UCG members must have significant jurisdictional authority and responsibility over the response at issue. UCG focuses on the mission – not on managing on-scene ops, but providing support to those ops. Where incidents affect multiple jurisdictions or the entire nation, multiple JFOs and UCGs may be established. The UCG will assume responsibility for coordinating Federal response activities at the incident level once established, freeing the RRCC to address other incidents. Governor's Authorized Representative (GAR)/State Coordinating Officer (SCO) is a member of the UCG.
UCS	Unified Coordination Staff. The UCS is led by the UCG.
USACE	U.S. Army Corps of Engineers
USFF	United States Fleet Forces Command
USG	United States Government
USPER	United States Person. A United States citizen; an alien known by the concerned intelligence agency to be a permanent resident alien; an unincorporated association substantially composed of United States citizens or permanent resident aliens; or a corporation incorporated in the United States, except for those directed and controlled by a foreign government or governments.
USS	United States Ship

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N. REFERENCES AND RESOURCES

Note: All of the references below can be found in the Regionally Aligned Forces (RAF) repository. The repository is CAC enabled. Once inside, click on “USNORTHCOM,” then “United States,” then “Domestic Operations.” [Click here](#) for the RAF Repository (CAC required). Another great resource that provides more in-depth information on domestic operations is the Domestic Operational Law Handbook. [Click here](#) for the DOPLAW Handbook (CAC required).

DSCA and NGCS Authorities

- 10th Amendment, U.S. Constitution
- Article 2, Section 2, U.S. Constitution (Powers of the POTUS as Commander in Chief)
- Article 4, Section 4, U.S. Constitution (Federal Government Protection of the States Against Invasion and Domestic Violence)
- Executive Order 11485 (Supervision and Control of the National Guard of the District of Columbia)
- Secretary of Defense Memorandum, “Supervision and Control of the National Guard of the District of Columbia”
- 5 U.S.C. § 6323 (Military Leave: Reserve and National Guardsmen) (5 U.S.C. § 5519 (Crediting Amounts Received for Certain Reserve or National Guard Service))
- 10 U.S.C. § 275 (Restrictions on Direct Participation by Military Personnel)
- 10 U.S.C. § 251-255 (Insurrection Statutes)
- 10 U.S.C. § 2557 (Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance (Excess property donation))
- 14 U.S.C. § 88 (Saving Life and Property)
- 14 U.S.C. § 93 (Commandant (USCG), General Powers)
- 18 U.S.C. § 1385 (Posse Comitatus Act)
- 28 U.S.C. § 1346, 2671-2680 (Federal Tort Claims Act)
- 31 U.S.C. § 1535, 1536 (Economy Act)
- 42 U.S.C. § 5121, et. seq. (Stafford Act)
- 32 CFR Part 185 (Defense Support of Civil Authorities)
- 33 U.S.C. § 701n (Emergency Response to Natural Disasters)
- 44 CFR Part 206 (Federal Disaster Assistance)
- Emergency Support Function 13, FEMA (Public Safety and Security)
- National Incident Management System, Federal Emergency Management Agency (FEMA)
- National Response Framework, FEMA
- National Disaster Recovery Framework, FEMA
- Pre-Scripted Mission Assignments Catalogue, FEMA
- Mission Assignment Guide, FEMA
- Emergency Management Assistance Compact (Public Law 104-321)
- Emergency Management Assistance Compact Operations Manual, National Emergency Management Association (NEMA)

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- International EMAC Operations Manual, NEMA
- CJCS STANDING DSCA EXORD 071415Z Jun 13
- CJCSI 3121.01B (Standing Rules for Use of Force)
- Joint Pub 3-28 (Defense Support of Civil Authorities)
- DoDD 1200.17 (Managing the Reserve Components as an Operational Force)
- DoDD 3020.40 (Mission Assurance, Defense Critical Infrastructure Program)
- DoDD 3025.18 (Defense Support of Civil Authorities)
- DoDD 4500.56 (DoD Policy on the use of Government Aircraft and Air Travel)
- DoDD 5105.77 (National Guard Bureau)
- DoDD 5210.56 (Arming and the Use of Force)
- DoDI 1100.21 (Voluntary Services in the DoD)
- DoDI 1200.18 (The United States Property and Fiscal Officer Program)
- DoDI 1215.06 (Uniform Reserve, Training, and Retirement Categories for the Reserve Components)
- DoDI 1235.12 (Accessing the Reserve Components)
- DoDI 3001.02 (Personnel Accountability in Conjunction with natural or Manmade Disasters)
- DoDI 3025.16 (Defense Emergency Preparedness Liaison Officer (EPLO) Programs)
- DoDI 3025.21 (Defense Support to Civilian Law Enforcement Agencies)
- DoDI 3025.22 (The Use of the National Guard for DSCA)
- DoDI 4515.13 (Air Transportation Eligibility)
- DoDI 6055.17 (DoD Emergency Management Program)
- DoDM 3025.01, Vol 1 (Defense Support of Civil Authorities: Overview)
- DoDM 3025.01, Vol 2 (Defense Support of Civil Authorities: Incident Response)
- DoDM 3025.01, Vol 3 (Defense Support of Civil Authorities: Pre-Planned DoD Support of Law Enforcement Agencies, Special Events, Community engagements, and Other Non-DoD Entities)
- ATP 3-28.1, MCWP 3-36.2, NTP 3-57.2, and AFTTP 3-2.67 (Multi-Service Tactics, Techniques, and Procedures for DSCA)
- AFI 10-801 (Defense Support of Civil Authorities)
- AFPD 10-8 (Defense Support of Civil Authorities)
- ANGI 10-201 (Air Transportation)
- ANGI 36-2001 (Management of Training and Operational Support Within the Air National Guard)
- AR 95-1 (Flight Regulations)
- OPNAVINST 3440.16E (Navy Defense Support of Civil Authorities Program)
- JAGINST 5800.7F [Chapter IV (Claims) and Chapter XI (Admiralty and Maritime Law)]
- MCO 3440.7A (Marine Corps Support to Civil Authorities (No longer available. Now see MCWP 3-36.2))
- CNGBI 1302.01 (Guidance for Members Performing Duty Under the Authority of 32 USC § 502(f))
- CNGBI 3100.01A (National Guard Counterdrug Support)
- CNGBI 3000.01 (Joint Enabling Team)
- CNGBI 3000.04 (National Guard Bureau Domestic Operations)

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- CNGBI 7100.00 (Training of JFHQ State Personnel, JOC, State Emergency Operations Center for Domestic Ops)
- CNGBN 1401 (Guidance for use of National Guard Members in Full-Time Duty Programs Title 32 (T32) Active Guard Reserve, T32 Full-Time national Guard Duty Operational Support (FTNGDOS) and Full-Time national guard Duty Counter Drug (FTNGDCD) Military Technicians for Conus Contingency Situations)
- NGR 10-4 (State Defense Forces)
- NGR 350-1 (Army National Guard Training)
- NGR 500-3 (Weapons of Mass Destruction Civil Support Team Management)
- NGR 500-5 (National Guard LE Support and Mission Assurance Ops)
- USNORTHCOM STANDING DSCA EXORD 102345Z Feb 11
- COMDTINST M16247.1 (The Maritime Law Enforcement Manual)
- Domestic Operational Law Handbook (CLAMO Publication)

Incident Awareness and Assessment (IAA)/Information and Intelligence

- DoD 5240.1-R (Procedures Governing the Activities of DoD Intelligence Components That Affect United States Persons)
- DoDD 5240.01, DoD Intelligence Activities
- DoDD 5200.27 (Acquisition of Information Concerning Persons and Organizations Not Affiliated with The Department of Defense)
- Deputy Secretary of Defense Policy Memorandum 15-002 (Guidance for the Domestic Use of Unmanned Aircraft Systems (SAR Exception))
- DODM 5240.01 (Procedures Governing the Conduct of DoD Intelligence Activities)
- AR 380-13 (Acquisition and Storage of Information Concerning non-Affiliated Persons and Organizations)
- AR 381-20 (Army Counterintelligence Program-CLASSIFIED)
- AFI 14-104 (Oversight of Intelligence Activities)
- CNGBI 2000.01B (National Guard Intelligence Activities)
- CNGBI 2400.00A (Acquisition and Storage of Information Concerning Persons and Organizations not Affiliated with the Department of Defense)
- CNGBI 7500.00 (Domestic Use of National Guard Unmanned Aircraft Systems)
- CNGBM 2000.01 (National Guard Intelligence Activities)
- NGA NSGM FA 1806, Revision 5 (Domestic Imagery)
- NORTHCOM Instruction (N-NCI) 14-3

Cyber

- PPD-41 (United States Cyber Incident Coordination, 26 July 2016)
- PPD-20 (U.S. Cyber Operations Policy (unclassified release, Fact Sheet on PPD-20, January 2013)
- National Security Strategy, 27 May 2010
- National Military Strategy (Issued by the Chairman of the Joint Chiefs of Staff, 8 Feb 2011)
- National Cyber Incident Response Plan (December 2016)
- Final Report of the Cybersecurity Subcommittee: Part I—Incident Response (June 2016)

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- JP 3-12(R) (Cyberspace Operations)
- Defense Strategy for Operating in Cyberspace July 2011)
- Secretary of Defense (SECDEF) Memorandum, “Establishment of a Subordinate Unified U.S. Cyber Command Under U.S. Strategic Command for Military Cyberspace Operations,” (23 June 2009)
- Directive-Type Memorandum (DTM) 17-007 (Interim Policy and Guidance for Defense Support to Cyber Incident Response) (dated 21 June 2017)
- 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
- DoD Cyber Strategy 2015
- DoD Strategy for Homeland Defense and Defense Support of Civil Authorities (February 2013)
- National Guard Cyber Strategy (published 5 Jan 2018)
- CNGBI 6001.00 (National Guard Bureau Cybersecurity Program)

Material and Supplies

- 32 USC § 708 (Property and Fiscal Officers)
- DoDI 1225.06 (Equipping the Reserve Forces)
- DoDI 1330.21 (Armed Services Exchange Regulations)
- AR 700-131 (Loan, Lease, and Donation of Army Material)

Search and Rescue (SAR)

- 14 U.S.C. § 88 (Search and Rescue)
- 14 U.S.C. § 141 (Cooperation with Other Agencies, States, Territories, and Political Subdivisions)
- DoDI 3003.01 (DoD Support to Civil Search and Rescue (SAR))
- NTTP 3-50.1 (Navy SAR Manual)
- AR 500-2 (Search and Rescue Operations)

Government Contracting and Fiscal Law

- 31 U.S.C. § 1341-44, 31 U.S.C. § 1350-51; 31 U.S.C. § 1511-19 (collectively referred to as the Anti-Deficiency Act)
- 10 U.S.C. § 114 (Authorizations and Appropriations)
- 10 USC § 2306 (Multi-Year Contracting)
- 10 U.S.C. § 2341 (Authority to Acquire Logistic Support, Supplies, and Services for Elements of the Armed Forces Deployed Outside the United States)
- 41 U.S.C. § 11 (The Feed and Forage Act)
- FAR Part 18 (Emergency Acquisitions)
- FAR 52.232-18 and 19 (The Subject to Availability of Funds Clauses)
- 31 U.S.C. § 1301 (The Purpose Statute)
- 31 U.S.C. § 1515 (Exceptions to Exceeding an Apportionment)
- 31 U.S.C. § 1502 (The Time Statute, includes “Bona Fide Needs”)
- 31 U.S.C. § 1558 (Availability of Funds after a Bid Protest)

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- 31 U.S.C. § 3302(b) (The Miscellaneous Receipts Statute)
- CJCSI 2120.01D (Acquisition and Cross-Servicing Agreements)
- DoDD 2010.9 (Acquisition and Cross-Servicing Agreements)
- DoDI 4000.19 (Support Agreements)
- DOD FMR, Vol 14, Ch. 10, para. 100404 (Funding Correction)
- NGB PAM 37-1 (Financial Management Guide for National Guard Executives)
- AFI 65-601 (Financial Management: Budget Guidance and Procedures)
- DoD Reg. 7000.14-R, Volume 11A (Financial Management Regulation) (*See specifically* Chapters 1, 3, and 4. These chapters provide procedures for reimbursement for support provided pursuant to the Economy Act, including if used during major disasters and emergencies. The chapters also provide policies and procedures for establishing appropriate fees for authorized services that DoD organizations perform.)
- DoD Reg. 700.14-R, Vol. 12 (Financial Management Regulation) (*See specifically* chapter 23. This chapter specifies incremental costs that are eligible for reimbursement, including for DoD support in response to major disasters and emergencies.)
- GAO Principles of Federal Appropriations Law (The Red Book)
- AR 27-20 (Claims)
- DA PAM 27-162 (Claims Procedures)

Medical

- 10 USC § 2557 (Excess Nonlethal Supplies: Availability for Humanitarian Relief, Domestic Emergency Assistance, and Homeless Veterans Assistance)
- JP 4-06 (Mortuary Affairs)
- DoDD 1300.22 (Mortuary Affairs Policy)
- DoDI 3025.24 (DoD Public Health and Medical Services in Support of Civil Authorities)
- DoDI 6200.03 (Public Health Emergency Management within the Department of Defense)
- Emergency Support Function 8, FEMA (Public Health and Medical Services)
- BUMED Global Health Engagement Volunteer Guidebook
- BUMEDINST 3104.2A (Use of Personally Owned Imaging and Recording Devices)
- BUMEDINST 6010.30 (Credentialing and Privileging Program)
- OPNAVINST 5090.1 (Environmental Readiness Program Manual: Disposing of Medical Waste)
- OPNAVINST 6210.2A (Quarantine Regulations of the Navy)
- Guiding Principles for Conducting Monitoring and Evaluation (M&E) for Medical Stability Operations (MSOs)

Civilians

- 31 U.S.C. § 1342 (The Voluntary Services Statute)
- 5 U.S.C. § 593, 5 U.S.C. § 3111, 10 U.S.C. § 1588, 10 U.S.C. § 2602, 10 U.S.C. § 1491, 10 U.S.C. § 1044, 10 U.S.C. § 10212, 33 U.S.C. § 569(c) (Exceptions to the Voluntary Services Statute)
- DoDI 1100.21 (Voluntary Services in the DoD)
- OPNAVINST 5720.2M (Embarkation in United States Naval Ships)

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- OPNAVINST 3100.8B (Deck Landing Operations by Civilian Helicopters with Civilian Pilots on U.S. Navy Vessels)
- OPNAVINST 5380.1C (Acceptance and Use of Voluntary Service in the Navy)

Media

- DoD 4515.13-R, Air Transport Eligibility
- DoDI 5435.2 Delegation of Authority to Approve Travel In and Use of Military Carriers for Public Affairs Purposes

Online Training:

- Joint Knowledge Online Training Opportunities (CAC enabled)
 - DSCA Overview
 - Course # T-US020
 - Cyber
 - JKO Course T-US1220 (International Legal Framework for Cyber Defense)
 - JKO Course P-US1101 (Joint Staff Officer Cyberspace Operations Awareness)
- FEMA online courses (first five courses are prerequisites for JOC-TC for the National Guard) (<https://training.fema.gov>, see “Independent Study”)
 - IS 75
 - 100.b
 - 200.a
 - 700.a
 - 800.b
- Intelligence and Intelligence Collection
 - Doctrine Networked (DOCNET) Education and Training Courses: <http://www.dtic.mil/doctrine/docnet/courses/intelligence/intel.htm>
 - 2.0 (Joint Intelligence)
 - 2-01.3 (Joint Intelligence Preparation of the Operational Environment)
 - DOCNET Podcast 2-0 (Joint Intelligence): http://www.dtic.mil/doctrine/docnet/podcasts/JP_2-0/podcast_JP_2-0.htm
- Specifically for members of the National Guard
 - Executive Joint Domestic Operations Course (Exec JDOC, NG specific)
 - For enrollment, call the POC at NGB, Mr. Tom Newman at (719) 332-6159, or e-mail him at thomas.g.newman.ctr@gmail.com. (current as of 20180217)
 - The Joint Operations Center (JOC) Training Course (JOC-TC): <https://gkportal.ng.mil/joint/J3/D05/NGJ372/JOC101/SitePages/Home.aspx>
 - The Joint Staff Training Course (JSTC): <https://gkportal.ng.mil/joint/J3/D05/NGJ372/JSTC/SitePages/Home.aspx> [student receives 1.5 Joint Qualified Officer (JQO) points]. Prior to applying for the JSTC, the student must complete the web-based Joint Domestic Operations Course (JDOC). To be enrolled in JDOC, send an e-mail to n-nc.peterson-n-cj7.mbx.j723-omb@mail.mil.

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- The Joint Reception Staging and Onward Movement Integration (JRSOI) Training Course:
<https://gkoportal.ng.mil/joint/J3/D05/NGJ372/JRSOI/SitePages/Home.aspx>
 - Suggested web-based FEMA courses to take prior to attending the JRSOI TC
 - IS 75
 - 100.b
 - 200.a
 - 700.a
 - 800.b
- The Joint Action Officer Integration Course (JAOIC):
<https://gkoportal.ng.mil/joint/J3/D05/B02/JAOIC/default.aspx>
- The NG J3/Director of Military Support (JG/DOMS) Course:
<https://gkoportal.ng.mil/joint/J3/D05/B02/J3DOMS/default.aspx>

Resident Courses:

- DSCA hosted by U.S. Army North:
 - DSCA Phase I is a 6-hr course taken online via JKO: T-US010, Defense Support of Civil Authorities
(https://jkodirect.jten.mil/html/COI.xhtml?course_prefix=J3S&course_number=T-US010)
 - DSCA Phase II is a one-week resident course hosted by U.S. Army North at select locations through the United States. Students must submit an application to attend.
 - For the National Guard, registration can be found in Guard Knowledge Online (GKO):
(<https://gkoportal.ng.mil/joint/J3/D05/B02/DSCAPhaseII/SitePages/Home.aspx>)
 - The NGB POC is Ms. Terral L. Williams (terral.l.williams.ctr@mail.mil, (703) 607-0926. (current as of 20180217)
 - For regular Army and Army National Guard personnel, upon completion of DSCA I and II, the service member is eligible to apply for and receive the personnel development skills identifier (PDSI) Code D7A, “DSCA Specialist.”
- FEMA Resident Courses
 - ICS 300
 - ICS 400
- Cyber
 - The Cyber Law Course through the National Defense University’s College of Information and Cyberspace (free for DoD active duty military personnel)

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APPENDIX A ADDITIONAL OBSERVATIONS AND TIPS

1. **Immediate Response Authority (IRA):** Commanders and judge advocates must understand the requirements and nuances of the commander's IRA.
2. **Emergency Management Assistance Compact (EMAC):** All States and territories should have a clear understanding of how the EMAC works, its intended usage, and how National Guard units deploy under the Compact. It is also worth discussing whether other memorandums of agreement (MOAs) should be entered for Puerto Rico and the U.S. Virgin Islands to further outline sustainment and the logistics tail. Understand how reimbursement under EMAC works. Under EMAC, supporting States use their National Guards to respond in State Active Duty (SAD) status with the expectation that the supported State will reimburse the supporting State for their costs. The supported State is also to provide logistical and certain sustainment support to the supporting State. However, when the supported State cannot meet its reimbursement requirements under EMAC, then, if the proper declarations have been made, such as 100% reimbursement to the affected State for their costs, then FEMA may engage.
3. **Communication (Internal):** As soon as the first National Guard unit is deployed under EMAC, and a major disaster or emergency is declared, there should be a daily sync for all judge advocates.
4. **Communication (External):** Be aware of and support consistent messaging. For instance, if the general public wonders why the National Guard cannot use their aircraft to transport everyone out of the affected area, the judge advocate can be a major help to the commander and PAO by providing competent advice on the rules that govern.
5. **Daily Logs:** Prepare a common log accessible to all JAGs/paralegals so that all legal events are recorded and accessible for reference. Know the relevant POCs and the documents necessary to process when requests for support from foreign governments are received. The Department of State is one POC. Ensuring the command's ACSA manager is aware of the activity so they can provide the paperwork to ensure reimbursement is key. It is also important to reinforce with your supply personnel that they must accurately account for the cost of all goods provided and services rendered to foreign militaries during operations. It may be helpful for the command to cover this matter in all orders/FRAGOs specifying support to or from a foreign government or organization. Even though arrival of foreign forces may be coordinated between various entities, the local National Guard judge advocate must also be included to provide adequate legal support concerning the arrival of an armed foreign force into US territory.
6. **Unity of Effort/Whole Community Concept:** The National Incident Management System (NIMS) and the National Response Framework (NRF) are rooted in a tiered response, which promotes unity of effort and the whole community concept. This concept means that the first responders to a major disaster or emergency flows come from the local level, then the State, and lastly, Federal government. The DoD serves in a support role when providing support to civil authorities. When a commanders attempt to exercise their IRA, there must first be a Request For Assistance from a civil authority. If not operating under IRA, then there must be a mission assignment (MA) from the Federal

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Emergency Management Agency (FEMA) operating under the Stafford Act or a Request For Assistance from a lead Federal agency (LFA) under the Economy Act.

7. **Civilian Partners:** It is possible that some of our civilian partners will not fully understand how the military plans, coordinates, or accounts for its forces. Judge advocates must know which agencies they will be interacting with, their key people, their battle rhythms, and, for law enforcement agencies, their RUFs. Be prepared to assign liaisons to the Governor's legal staff and/or the State attorney general's office to enhance communications.
8. **Roles:** All parties supporting a disaster response must clearly understand their roles and the roles of others. Understanding matters such as who has command and control, who has the authority to make tactical decisions, and who to call with specific issues are critical to mission success. (Appendix D)
9. **Status:** Judge advocates should understand the different funding streams based on service-member status, the effect that status has on Federal reimbursement, and the effect that status has on the ability of service-members to perform certain activities. (Appendices H, I, and J)
10. **Funding and Fiscal Law:** Be familiar with the proper procedures to receive reimbursement from FEMA under the Stafford Act and from other lead Federal agencies under the Economy Act. Know how to navigate the fiscal law analysis and understand the "color of money." Familiarize yourself with the funding vehicles available and review Federal Acquisition (FAR) Part 18, Emergency Acquisitions. Brush up on the differences between "obligation" and "commitment." During emergency response operations, a private entity may ask you whether you want "X," "Y," or "Z." Make sure you understand whether a cost to the government is involved and the limits of your authority. The judge advocate rarely has the authority to obligate the government.
11. **Training and Briefs:** Judge advocates must be trained in DSCA and civil support before the incident happens. All legal disciplines are incorporated. Also, For National Guard judge advocates, brief the personnel arriving under the Emergency Management Assistance Compact (EMAC) on the State/territory RUF. Ensure that all military personnel know and understand their legal status (T-10, T-32, or State Active Duty). Brief the commander on the status of all personnel participating in the operation and advise the significance thereof. At a minimum, provide status reports to the SJA about 1) criminal incidents; 2) disciplinary/administration/prosecutorial actions; 3) claims against the U.S. Government; and 4) number of personnel receiving legal assistance and in what specific areas. (Appendices E, H, I, and J)
12. **The Safe Haven Program:** Currently, the safe haven program does not include evacuation of the dependents of National Guard personnel.
13. **Planning:** When dealing with a disaster response to water-locked locations like Puerto Rico, the U.S. Virgin Islands, Guam, and Hawaii, consider the legal and policy issues that may arise if the governments cannot function as a result of the storm. Also, contemplate the laws triggered when conducting maritime transportation of equipment and supplies versus the most common methods, land and air. Prepare your Domestic Operations Smart Book ahead of time. Feel free to include matters that are specific to your command or State. Include samples of forms, and points of contact. Ensure that your rules for the

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use of force (RUF) and Standards of Conduct are updated. If you are T-10, see CJCSI 3121.01B, the Standing Rules for the Use of Force. If you are National Guard serving in State Active Duty or T-32 status, the RUF must align with State law. Have available DoD Directive (DoDD) 3000.3, "Policy for Non-Lethal Weapons"; DoDD 5210.56, "Arming and the Use of Force"; DoDD 5525.5, "Defense Support of Civilian Law Enforcement Agencies"; DoDD 5240 1-R, "Activities of DoD Intelligence Components that Effect U.S. Persons"; and the Current Chairman of the Joint Chiefs of Staff (CJCS) Standing DSCA Executive Order. Also have copies of this publication and the DOPLAW Handbook ready to go. Lastly, if unit personnel live in the area affected by the disaster, work with the staff to ensure that they coordinate shelter support and determine the availability of other needed support services such as commissary, Post Exchange, daycare, etc. Otherwise, accountability of personnel may become very difficult. If the disaster is serious enough, the emergency management office may be destroyed. The personnel normally participating in the disaster response may also be victims.

Communication, both internet and telephone, may be down. Be prepared. (Appendix B)

14. **Manning 24/7 Operations:** Manning a joint operations center (JOC) within the States or the National Guard Coordination Center (NGCC) at the NGB can require 24/7 operations for a period of time lasting beyond initial expectations. To that end, judge advocates in positions of leadership must seek to understand the scope of the mission, how long the mission may last, and then project the numbers and capabilities of judge advocates and paralegals under their command, along with equipment, and supplies that may be needed to source the mission.
15. **Optics:** Uniformed or not, the personnel providing support should not appear as an invading force. It is always important to keep in mind that no one in a domestic event is the "enemy." The area of operation (AO) is not overseas where uniformed military personnel are engaging a foreign threat. For T-10 forces, the standing rules for use of force (SRUF) are applicable as found in Chairman of the Joint Chiefs of Staff Instruction (CJCSI) 3121.01B. For the National Guard in their State Active Duty (SAD) or T-32 statuses, rules for use of force set by each State govern. The rules of engagement (ROE) have no application when the DoD is providing support to civil authorities within the 54 States and territories. The mindset is different. It is the judge advocates responsibility to join with the command team to reinforce the differences in training briefs and throughout the mission. Pay close attention to personnel who have recently redeployed from theater because they may have a more difficult time switching from the "in theater" frame of mind. This different mindset may also affect the type of protective gear worn and the firearms issued. For example, a service-member may be directed to use soft body armor under their uniform instead of hard body armor over it. A service-member may be issued an M-9 sidearm versus an M-4 rifle. The uniform and arming choices can be tools to advance the mission to help ensure that it is seen by all as one of support to civil authorities versus one of war against the enemy. To that end, operation plans (OPLANs), operation orders (OPORDs), and other documents should be scrubbed for war references such as "ROE," "enemy," "combatant," "war," "prisoner of war" etc. Conversely, civilians may be referred to using terms like "peaceful," "protestors," "victims," "evacuees," or "citizens." The OPORD/OPLAN has annexes. The judge advocate is

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- involved with writing a portion of Annex C (operations) and Annex F (sustainment). The judge advocate should also review the base order. (AR 27-1; FM 1-04; FM 6-0)
16. **Rules for Use of Force (State and Federal):** National Guard judge advocates should review their State's laws and any local laws related to carrying a lawful/concealed weapon. For example, if a State permits citizens to carry a weapon openly, seeing a citizen carrying a weapon during an operation needs to be covered during RUF briefings and vignettes. The judge advocate should also review the State's laws regarding use of force for protection of personal property, State property, and Federal property (if applicable). Although arming of T-10 forces in the joint area of operation was not authorized, the matter of standing rules for the use of force training requirements should be clarified in the DSCA EXORD. Clarification, by either the Joint Staff or U.S. Northern Command, will ensure consistent training standards for employed forces, mitigate risk of violations, and avoid duplication of effort. To facilitate unity of effort, the training should capture mission-specific differences between T-10 and State commanded National Guard forces in the joint operations area. For all personnel, regardless of component, rules for the use of force cards should be prepared in advance of any emergency to ensure that they are ready for review, approval, and distribution when needed.
17. **Social Media/Disparaging Conduct Rules:** The misuse of social media by service-members can affect operational security, morale, and the political environment for the civilian authorities we are supporting. In a world where everyone has a smart phone, commanders should address what is and is not appropriate conduct on social media. If necessary, commanders may order service-members to refrain from taking pictures, posting comments on social media, or posting information indicating where they are working inside the AO. The misuse of social media may lead to operational security issues that may jeopardize the mission and place others in danger. Similarly, service-members should also be ordered to not make any disparaging or improper statements to members of the public or the media that would bring discredit upon the DoD, their service, their State National Guard, their unit, or themselves. Commanders may document these orders and the service-member's understanding of these orders using Department of the Army (DA) Form 4856, which can be signed by each service-member during their Joint Reception, Staging, and Onward Integration (JRSOI) briefs. ["DA Form 4856 Social Media and General Orders Counseling Language" template (or service equivalent) and Appendix G]
18. **Medical Liability:** Review the State's Good Samaritan statute and civil/criminal liability statute(s) when military forces are activated. Maintain current copies of relevant statutes in the local Office of the Staff Judge Advocate Domestic Operations (OSJA DOMOPS) Smart Book. Draft a memo that can be handed out/briefed to medical providers/service members to alleviate liability concerns.
19. **Service-member Rights:** For National Guard judge advocates, be prepared for some service-members to have issues with their civilian employers. Review the State's military statutes for rights afforded to service-members. Brief members on these rights during their JRSOI briefs. Also brief members on all statutes affecting members while in State active duty status. Maintain current copies of relevant statutes in the local OSJA

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DOMOPS Smart Book. Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Service-members Civil Relief Act (SCRA) do not apply to members while serving in their State Active Duty (SAD) status but similar State statutes may provide service-members with like protections. Be prepared to call civilian employers to educate them on relevant State statutes. For members who are also first responders or law enforcement personnel in their civilian jobs, their civilian employers may assert that they need the member more than the military. As these situations arise, brief the commanders so they may determine the next course of action (COA).

20. **Domestic Imagery and Incident Awareness and Assessment.** Communication between subordinate and enabler JAs with NORTHCOM and other information operations stakeholders is critical to ensure compliance with applicable statutory and/or regulatory requirements, and to avoid duplication of effort. As the need for imagery is predicable, much of this coordination can be done prior to the hurricane season, but must—in any case—continue throughout the hurricane season on a regular basis. Also, note that counter-intelligence (CI) personnel may not be directed/ordered to serve as “ground sensors” by taking pictures or documenting certain activities such as route clearance requirements. There is a material difference between “directed” versus “incidental” domestic collection activities. Pursuant to the DSCA EXORD, only the CCDR can direct the use of intelligence personnel for non-intel purposes. For DoD assets to use aerial imagery in support of civilian law enforcement agencies, there must be prior approval by OSD. This approval is required because a separate PCA analysis must occur before the images are released. Lastly, here is a quick tip about the difference in use of a PUM versus a DILR. DILRs are used when there are no intelligence assets or capabilities used. PUMs are just the opposite.
21. **The National Guard Bureau (NGB) Joint Enabling Team.** The National Guard Bureau (NGB) Joint Enabling Team (JET) is available to provide critical NGB joint staff expertise to support the State during a crisis event. JETs come prepared with the equipment necessary to ensure proper communication and connectivity to ensure a successful mission without imposing a burden on the State. The JET will arrive self-sufficient and self-sustaining. JETs may be composed of representatives from J1, J2, J3, J4, J6, and Public Affairs. JETs will include the NGB expertise requested by the State. In addition, Support Cells to the NGB JETs may be also be attached. Cell members may include administrative NCOs, judge advocates, EMAC subject matter experts, and Air Coordinating Officers.
22. **Technician Law Enforcement Leave.** Know the rules governing placement of technicians on TDY and the effect on their status. [5 U.S.C. § 6323(b); 5 U.S.C. § 5519]
23. **Family Readiness Plan.** In case of a hurricane or flood, the service-members and their families may also be victims. If such is the case, know the legal implications of placing the service-members on orders while leaving their families without sufficient care.
24. **Child Custody/Child Support.** Be prepared to advise service-members on the rules governing child custody and child support. What if the service-member has legal custody of the child and the child must be evacuated while the service-member stays in the affected area on orders? What if the service-member’s ability to pay is materially affected by nature of being placed on State Active Duty orders for an extended period of time?

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25. **Landlord/Tenant Law.** In the aftermath of a hurricane, landlord/tenant laws become very important. What if the service-member is renting property that is now uninhabitable and the landlord demands full rent? What if the service-member is renting property that is inhabitable but is ordered TDY to a safe haven?
26. **Homeowners Insurance Claims.** Ensure that your service-members have read the small print in their homeowner's insurance policy. The terms of some policies read such that, once the homeowner makes a claim, the mortgagee/lender has a right to determine how those funds are used.
27. **FEMA Individual Disaster Assistance.** FEMA disaster assistance may provide support to victims as they recover from a major disaster. The types of assistance provided may be for the individual's home (primary residence only), medical and dental, child care, funeral and burial, essential household items, moving and storage, or some vehicle related expenses. For more information, see the FEMA website at <https://www.fema.gov/individual-disaster-assistance>.
28. **Legal Personnel placement in JTF Headquarters to Facilitate Judge Advocate Unity of Effort.** During the Hurricane Harvey response, the joint enabling cell was co-located with the Texas National Guard staff at the JFHQ located at Camp Mabry, TX. Similarly, in Florida, the joint enabling cell was co-located with the Florida National Guard JFHQ located at Camp Blanding, Florida. This co-location proved invaluable as staff counterparts could easily and quickly coordinate with one another, which expedited the orders process and eventual deployment of the appropriate troops to complete the task at hand. This was particularly important in TX, as the state was not accustomed to Federal forces sharing the joint operations area. Also, this was the first time that the Governor of Texas approved a Dual Status Commander so judge advocates were not very familiar with how DoD DSCA authorities enabled the Federal response. Co-location also allowed crosstalk between legal and operations staff to ensure that all parties understood the relevant operational constraints (e.g., RUF, policy).

Past AARs have recommended that the T-10 judge advocate should be co-located with the National Guard judge advocate. During the response to Hurricane Harvey, the T-10 judge advocate was positioned next to the T-10 Deputy, directly outside the office of the Dual Status Commander. This positioning allowed the T-10 judge advocate to gain visibility on issues as they were brought to the T-10 Deputy's attention. The T-10 judge advocate would then communicate with the judge advocate from the Texas National Guard on any issues that required legal coordination. The judge advocate from the Texas National Guard was in the same building as the T-10 judge advocate. Co-location of the T-10 judge advocate with the T-10 Deputy is more beneficial than being co-located with the judge advocate from the National Guard so long as effective communication and coordination still occur.

29. **Application of the Dual Status Commander Doctrine.** During Hurricane Harvey, the Dual Status Commander was responsible for a robust compliment of both NG and T10 forces. Texas, being vast in terms of size and capability of its NG forces, was only in need of some very specific T-10 capabilities (e.g., high water vehicles), and appeared to have very little difficulty assembling the National Guard forces it required to accomplish

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most of the consequence management missions that arose. Moreover, this was a land operation with the Joint Force Land Component Commander in an operational control role of the T-10 forces and the Dual Status Commander in a tactical control role. The result was a doctrinally consistent approach to C2 throughout the joint operations area.

Different from Hurricane Harvey, Hurricanes Maria and Irma resulted in the activation of three Dual Status Commanders. However, few T-10 units were under the tactical control of the Dual Status Commanders located in Florida and Puerto Rico. No T-10 units were under the tactical control of the Dual Status Commander in the U.S. Virgin Islands. Due to the relatively small size of the islands and their populations, coupled with the devastating and widespread damage to the infrastructure throughout the islands, the National Guards were challenged to assemble their forces expediently. In the U.S. Virgin Islands and Puerto Rico, a small fraction of the forces called to duty were able to report in the early days of the response. As a result, the response was delayed—at least to some extent—while the National Guard leadership attempted to establish communications, and accountability of personnel/equipment. This was further complicated by the remote locations of U.S. Virgin Islands and Puerto Rico, which also affected the ability for EMAC forces to arrive quickly.

Unlike in Hurricane Harvey in Texas, the response efforts to Hurricanes Irma and Maria in the U.S. Virgin Islands and Puerto Rico was initially led by the Joint Force Maritime Component Commander. NAVNORTH, as the component command responsible for DSCA operations, did not relinquish tactical control of the T-10 forces in the joint operations area to the Dual Status Commander. Instead, NAVNORTH relied on their ship's staff—to include judge advocates—to meet their needs. As a result, support from U.S. Northern Command was not required since the Dual Status Commanders were not used.

While the 2012 NDAA states that the DSC concept should be the “usual and customary” course of action when the DoD engages in support of civil authorities, it may not always be the best or most appropriate command and control (C2) arrangement. The appropriateness of the C2 arrangement depends on the circumstances of the disaster in question. This is particularly true for OCONUS disasters where 1) members of the National Guard may be just as affected as the local population and 2) EMAC forces would not be as responsive as for a disaster as they would be in CONUS. While there may have been good reason to not place the T-10 forces under the C2 of the Dual Status Commanders in the hurricane response in the U.S. Virgin Islands and Puerto Rico, either the doctrine should change to be more flexible, NAVNORTH should be compelled to more closely follow doctrinal procedures, or NORTHCOM should consider more thoroughly whether a DSC is the appropriate C2 arrangement when the Joint Force Maritime Component Commander is the operational control authority, or a remote island is the situs of a disaster response. In the event of policy deviation, appropriate coordination with Office of the Secretary of Defense should be made.

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APPENDIX B
DSCA AND NGCS CHECKLIST

I. DSCA Defined: Support provided by the DoD forces (when the Secretary of Defense, in coordination with the governors of the affected States, elects and requests to use those forces in a T-32 status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special events.

II. National Guard Civil Support (NGCS) Defined: Support provided by the National Guard while in a State Active Duty status or Title 32 status to civil authorities for domestic emergencies, designated law enforcement, and other activities.

III. Command and Control (C2)

- DoD:** In response to major disasters or emergencies, the Federal military is typically not in charge of the incident. Instead, when the DoD is engaged, it normally serves in a direct support role. A commander's civilian counterpart is the Incident Commander (IC) or a member of the Unified Command. Unified command is an application of the National Incident Management System (NIMS)/Incident Command System (ICS) when there is more than one agency with incident jurisdiction or when incidents cross political jurisdictions. In the unified command, entities develop a common set of objectives and strategies, which provides the basis for a single incident action plan.
- National Guard:** When members of the National Guard are serving in their State Active Duty (SAD) or Title 32 (T-32) statuses, C2 remains with the Governors of the respective States and territories. The exception is the District of Columbia (D.C.) because D.C. does not have a Governor. As such, C2 of the D.C. National Guard (DCNG) rests with the Secretary of Defense (SecDef). SecDef commands DCNG military operations through the Commanding General (a 2-star General Officer). The Commanding General works with and through the Adjutant General (TAG, a 1-star General Officer). If directed by the President as Commander-in-Chief, SecDef may order the DCNG under Title [4]9 of the District of Columbia Code to provide support to the civil authorities of the District of Columbia. (Executive Order 11485) Finally, when members of the National Guard are serving in their Title 10 (T-10) status, C2 transfers to the Department of Defense with POTUS serving as Commander-in-Chief.

IV. Phase I: Assessment, Preparation, and Mobilization

- The Commanding General, or, in the case of the National Guard, The Adjutant General (TAG), will issue the operational order (OPORD) or operational plan (OPLAN).
- The OPOrd/OPLAN has annexes. The judge advocate (JA) is to be involved with writing a portion of Annex C (operations) and Annex F (sustainment), and reviewing the base order. (AR 27-1; FM 1-04, FM 6-0, The Operational Law Handbook ch. 23 (2017))
- Log into JAGCNET, go to academic departments in TJGALCS, and download the most recent desk or hand books for Fiscal Law, Contract Law, Domestic Operational Law,

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Operational Law, and Administrative Law

- If you are in the National Guard, log into Guard Knowledge Online (GKO), search the site for “domestic operations.” Download any relevant and useful information.
- If serving in a T-10 status, create a tri-fold pamphlet from CJCSI 3121.01B, the Standing Rules for the Use of Force (SRUF). Brief everyone, including the commander, on the SRUF and provide everyone with a copy of the pamphlet before deployment.
- If serving under T-32 or SAD status, the Rules for the Use of Force (RUF) must align with the laws of the State or Territory. Draft or obtain a copy of the RUF. Coordinate with State agencies and ensure accuracy. Create a tri-fold pamphlet of the RUF. Brief everyone, including the commander, on the RUF and provide everyone with a copy of the pamphlet before deployment!
- Have available DoD Directive (DoDD) 3000.3, “Policy for Non-Lethal Weapons”; DoDD 5210.56, “Arming and the Use of Force”; DoDD 5240 1-R, “Activities of DoD Intelligence Components that Effect U.S. Persons”; DoDM 5240.01, “Procedures Governing the Conduct of DoD Intelligence Activities”; DoDD 5148.13, “Intelligence Oversight”; and the Current Chairman of the Joint Chiefs of Staff (CJCS) Standing DSCA Executive Order (EXORD)
- Review funding, demobilization, and entrance and exit strategies by component and duty status.
- Familiarize yourself with Federal Acquisition Regulation (FAR) Part 18, Emergency Acquisitions.

V. Phase II: Deployment

- For members of the National Guard serving in their State Active Duty (SAD) or T-32 status, contact the Liaison Officer (LNO) at State Emergency Operations Center (EOC) and police headquarters to coordinate legal aspects of deployment. For personnel serving under T-10, including the National Guard when “Federalized,” make liaison with your counterpart who will be located with the Defense Coordinating Officer (DCO).
- For National Guard JAs, brief the forces arriving under the Emergency Management Assistance Compact (EMAC) agreements on the State/territory RUF. (if applicable)
- Stick close to the commander. Serve as a trusted resource. Maintain situational awareness of mission execution and ensure unit activities are consistent with the law.
- Be forward thinking. Be prepared to advise the SJA of the need for additional SJA personal or of the need to deploy additional personnel with the advance party. (if necessary)
- Ensure that all military personnel know their legal status (T-10, T-32, or SAD) and limits of their authorities. Brief the commander on the status of all personnel participating in the operation and advise of the significance thereof.
- Provide status reports to higher headquarters including, at a minimum the following: 1) Criminal incidents; 2) Disciplinary/administrative/prosecutorial actions; 3) Claims against the U.S. Government; 4) Number of personnel receiving legal assistance.

VI. Phase III: Support of Civil Authorities

- Continue to advise commanders and staff on legal matters.
- Verify that proposed Mission Assignments (MAs) are legally permissible, approved, and executed according to applicable references and restrictions.
- Ensure personnel involved in Military Support to Civilian Law Enforcement Agencies (MSCLEA) comply with the guidance and limitations found in the Posse Comitatus

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Act, SRUF, and Intelligence Oversight rules and restrictions.

VII.Phase IV: Re-Deployment/Demobilization

- Clear all legal actions before re-deployment.
- Close all civil/military actions before re-deployment.
- Contact the Center for Law and Military Operations (CLAMO) at TJAGLCS to help prepare an After Action Report (AAR) and lessons learned. The general phone number for CLAMO is (434) 971-3145. CLAMO may also be contacted via NIPR at usarmy.pentagon.hqda-tjaglcs.mbx.clamotjaglcs@mail.mil and SIPR clamo.clamotjaglcs@us.army.smil.mil.

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APPENDIX C THE ADJUTANTS GENERAL

In accordance with CNGBI 3000.04, The Adjutants General (TAGs) of the Several States are the commanders, and in almost all cases, the ultimate authority for non-Federalized National Guard forces. TAGs are vital in the proper performance of and complete accounting for all civil support provided by the members of their State's National Guard (NG). When operating in their State Active Duty (SAD) status, TAGs answer almost exclusively to the Governors, subject to property accountability, reimbursement standards and applicable State and Federal law. Federal aspects of property accountability, reimbursement, and funding are managed through the United States Property and Fiscal Officer (USPFO) of each State. TAGs are key to ensuring the situational awareness needed by the National Guard Communication Center (NGCC) to enable the Chief of the National Guard Bureau (CNGB) to serve as an advisor to the Chairman of the Joint Chiefs of Staff on the non-Federalized NG. Additionally, TAGs must ensure adherence to applicable statutes and regulations as mandated. In certain States, the Adjutant General 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.

Some of the tasks performed by TAGs are as follows:

- Generally exercises the command authority of the Governor over State National Guard units and forces 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.
- Directs and oversees the daily activities of the State National Guard in order to accomplish the statutory and regulatory functions assigned.
- Supports the CNGB who serves in an advisory role to senior leaders of the Department of Defense and other Federal agencies.
- Supports the Secretary of Defense 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 and terrorist by gathering and submitting required information from their respective State or territory.
- Supports the Secretary of Defense and the CNGB in preparing the Annual Report on National Guard and Reserve Component Equipment and Quarterly Personnel and Unit Readiness reports.
- Maintains the training and readiness of their assigned forces to conduct all assigned State and Federal missions.
- Monitors the implementation of policy and ensures that all directed actions are completed in a timely manner.
- Revises existing State documents or develops implementing documents as necessary.
- Complies with the reporting requirements needed for civil support provided by the State's National Guard.
- Prepares and submits plans for National Guard Domestic Operations (NGDO) as directed.
- Supports the CNGB who serves as the channel of communications between the several States and the Secretary of Defense on matters relating to the National Guard.

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- Operates and maintains a Joint Operations Center (JOC) with the capability to receive and respond to classified messages.

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APPENDIX D DUAL STATUS COMMANDERS

The statutory authority to appoint dual-status commanders (DSC) can be found in 32 U.S.C. §§ 315, 325. Section 315 governs the detail of regular members of the Army and Air Force to duty with the National Guard whereas Section 325(a)(2) provides the authority for a National Guard officer to also serve as an active duty officer as well. Thus, a DSC is a commander who may, by law, serve in two statuses, Federal and State, simultaneously. In State status, the DSC is a member of the State chain of command, subject to the orders of the Governor and the Adjutant General (TAG) of the DSC's State, and, on their behalf, exercises command of assigned State National Guard forces. In Federal status, the DSC is a member of the Federal chain of command, subject to the orders of the President, the Secretary of Defense, and the supported Combatant Commander (the Commander, U.S. Northern Command, when in the forty-eight contiguous States, Alaska, the District of Columbia, and the territories of Puerto Rico and the U.S. Virgin Islands; or the Commander, U.S. Pacific Command, when in Hawaii and the territory of Guam); and, on their behalf, exercises command of assigned Federal military forces. In simpler terms, a dual-status commander is responsible for performing two separate and distinct, but related, jobs with two separate and distinct teams for two separate and distinct bosses, all at the same time.

The intended benefit of appointing a DSC is to facilitate unity of effort between State National Guard forces, operating on behalf of a Governor, and Federal military forces, operating on behalf of the President, the Secretary of Defense, and the supported Combatant Commander in achieving common objectives in a disaster response or in securing a national event. Because the DSC receives orders from both the State and Federal chains of command, and commands State and Federal forces in the DSC's separate and distinct statuses, the DSC may work with both the Adjutant General and the supported Combatant Commander to minimize any potential conflict between State and Federal orders. If a conflict cannot be resolved, the Secretary of Defense or the Governor retain the authority to terminate the DSC's appointment and dual-status authorization. The DSC may also promote synchronization between the two separate chains of command to achieve common objectives more effectively and efficiently.

By law, only an officer of the Army National Guard or Air National Guard or a commissioned officer of the Regular Army or Regular Air Force may serve as a DSC. Consistent with a 2010 arrangement between the Secretary of Defense and the Council of Governors on behalf of the Governors of the States, officers will normally be considered as candidates to serve as a DSC only if they have completed specialized training and certification, which is jointly managed by the Commander, U.S. Northern Command, and the Chief, National Guard Bureau.

To establish a DSC, the Secretary of Defense, acting on the authority delegated to him by the President on April 14, 2011, enters into a memorandum of agreement (MOA) with the Governor of a State. This MOA establishes mutually acceptable terms for DSC appointment and

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employment. To expedite appointment of DSCs, DoD has established standing MOAs with 51 of the 54 States and territories.

Dual Status Commander Frequently Asked Questions

Question: May a commissioned officer of the U.S. Navy or U.S. Marine Corps be appointed to serve as a DSC?

Answer: No. Currently, the law permits only an officer of the Army National Guard or Air National Guard or a commissioned officer of the Regular Army or Regular Air Force to be appointed as a DSC.

Question: May an officer of the Army Reserve or Air Force Reserve be appointed to serve as a DSC?

Answer: No. Currently, the law permits only an officer of the Army National Guard or Air National Guard or a commissioned officer of the Regular Army or Regular Air Force to be appointed as a DSC.

Question: Is it usual and customary to appoint an officer of the Army National Guard or Air National Guard to serve as a DSC?

Answer: The selection of the best officer to be appointed to serve as a DSC is considered on a case-by-case basis and takes into account the unique circumstances and operational requirements of the disaster or event at hand.

Question: Who decides whether or not to appoint a DSC?

Answer: Whether to appoint a DSC is a mutual decision by the Secretary of Defense and the Governor of a State.

Question: In the case of a disaster that affects multiple States, may the Secretary of Defense and the Governors of the affected States appoint a single DSC to command all National Guard and Federal military forces responding to the disaster in each of the affected States?

Answer: No. Although Federal laws do not prohibit the appointment of a multi-state DSC, as a general matter, State laws do. To be appointed to serve as a multi-State DSC, an officer would have to hold a commission in the National Guard of each of the States in which the DSC would exercise command. Generally, State laws do not permit an officer of the National Guard of a State to hold a commission in another State at the same time. Therefore, a single DSC cannot be appointed to command all National Guard and Federal military forces responding to a disaster in multiple States. Instead, a separate DSC would have to be appointed to command in each of the affected States.

Question: Does the appointment of a DSC grant the Governor of a State the authority to give orders to Federal military forces or the President the authority to give orders to a State's National Guard forces?

Answer: No. Consistent with the Constitution and laws of the United States, the Governor of a State has no authority to give orders to Federal military forces and, unless National Guard forces

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are either called into Federal service or ordered to Federal active duty, the President has no authority to give orders to a State's National Guard forces.

Question: How much discretionary authority does the DSC have to use National Guard and Federal military forces to carry out the separate orders of the Governor of a State (or the State's Adjutant General) and the President (or Secretary of Defense or supported Combatant Commander)?

Answer: The DSC may only use State National Guard forces to carry out the orders of the Governor of a State (or the State's Adjutant General). Likewise, the DSC may only use Federal military forces to carry out the orders of the President (or Secretary of Defense or supported Combatant Commander).

Question: May the Governor of a State use a DSC to request additional DoD forces or equipment?

Answer: No. The appointment of a DSC does not change the procedures pertaining to the Governor of a State's requests for Federal assistance, including DoD assistance. Consistent with current laws and procedures, the Governor of a State requests Federal assistance from the primary Federal agency (e.g., the Federal Emergency Management Agency for disaster responses, U.S. Customs and Border Protection for border security, the U.S. Secret Service for national special security events, and the Department of Health and Human Services for public health emergencies).

Question: May the President (or the Secretary of Defense) use a DSC to Federalize the National Guard or authorize National Guard duty in a title 32 status?

Answer: No. Current law and policies do not permit the use of a DSC to Federalize the National Guard or authorize National Guard duty in a title 32, U.S. Code, status.

Question: May the Governor of a State use a DSC to request additional DoD forces or equipment?

Answer: No. The appointment of a DSC does not change the procedures pertaining to the Governor of a State's requests for Federal assistance, including DoD assistance. Consistent with current laws and procedures, the Governor of a State requests Federal assistance from the primary Federal agency (e.g., the Federal Emergency Management Agency for disaster responses, U.S. Customs and Border Protection for border security, the U.S. Secret Service for national special security events, and the Department of Health and Human Services for public health emergencies).

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APPENDIX E

1 December 2017

INFORMATION PAPER

SUBJECT: EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC)

PURPOSE: Use of the National Guard for law enforcement pursuant to an EMAC

KEY POINTS:

- Article 1, Section 10 of the Constitution prohibits States from entering into any agreements or compacts with another State without the consent of Congress. However, the 10th Amendment of the Constitution reserves to the States powers that are not delegated to the United States by the Constitution nor prohibited by the United States to the States. In other words, Reserved Powers allows States to enter into agreements with other States and even with provincial or territorial governments as long as the federal government has not specifically reserved or retained that power.¹ As such, States have entered into agreements with fellow States for mutual aid prior to what is now commonly known as EMACs.
 - In 1992, Hurricane Andrew devastated much of south Florida. Governor Lawton Chiles called upon South Carolina, Virginia and Georgia for help. This resulted in the Southern Governors Association (SGA) developing a mutual aid compact called the Southern Regional Emergency Management Assistance Compact (SREMAC).
 - In 1993, 17 Governors signed the SREMAC. However, the State Attorney Generals determined that the agreement must be ratified by each State legislature to comply with State laws governing emergency power of the governors.²
 - In 1994, Congress incorporates many of the provisions of the Federal Civil Defense Act of 1950 into Title VI, "Emergency Preparedness," of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.³
 - In 1995, the SGA agreed to expand the SREMAC nationwide in an effort to expand the emergency preparedness interstate compact. The SREMAC was

¹ The federal government reserves the right to enter into agreement with a Governmental body such as the Government of Canada. However, the States is free to enter into reciprocity agreements with provinces and territories such as the agreement between the State of New York and province of Ontario. See also <http://www.iemg-gigu-web.org/index-e.asp> for discussion on International EMAC (IEMAC) in which northeastern State have entered into an agreement with east Canadian provinces and to access the International Emergency Management Assistance Compact Operations Manual. Similar agreements have been made with northcentral and northwestern States with central and west Canadian provinces.

² See www.emacweb.org

³ CRS Report RL34585, The Emergency Management Assistance Compact (EMAC): An Overview, by Bruce R. Lindsay.

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revised and renamed EMAC.⁴ EMAC was activated for the first time during Hurricane Opal.⁵

- In 1996, Congress passed Public Law 104-321⁶ establishing the first national compact since the FCDA⁷. Congress expressly consented to EMACs entered into by several enumerated States.⁸ Congress further consented to EMACs being entered into by “the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions”⁹ as implemented through State legislation.¹⁰
- In 1997, the National Emergency Management Association agreed to administer EMACs providing a national platform.
- EMAC provides for mutual assistance between States 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.
 - Mutual assistance may include the use of a States' National Guard forces by the National Guard Mutual Assistance Compact or mutual agreement between States.¹¹
 - Mutual assistance of certain emergency service functions include fire services, ***law enforcement***, emergency medical, transportation, communications, public works and engineering, building, inspection, planning and information assistance, mass care, resource support, health and medical services, and search and rescue.¹² The same powers, duties, rights, and privileges of the supported State are given to the supporting States for emergency functions under the EMAC.¹³
- EMAC acknowledges the Reserved Powers under the 10th Amendment of the Constitution which give States the power to police. This unique State function carries State-specific criminal laws and rules for the use of force which vastly

⁴ CRS Report RL34585, The Emergency Management Assistance Compact (EMAC): An Overview, by Bruce R. Lindsay.

⁵ www.emacweb.org; www.nhc.noaa.gov/data/tcr/AL171995_Opal.pdf

⁶ <https://www.gpo.gov/fdsys/pkg/PLAW-104publ321/html/PLAW-104publ321.htm>

⁷ The Federal Civil Defense Act of 1950 (FCDA) allowed States to “negotiate and enter into interstate civil defense compacts [to] permit furnishing of mutual aid for civil defense purposes in the event of an attack.” However, the FCDA suffered from “years of minimal funding, considerable opposition, and scant public support.” CRS Report RL34585, The Emergency Management Assistance Compact (EMAC): An Overview, by Bruce R. Lindsay.

⁸ Sec. I, PL 104-321 (1996)

⁹ Art. I, PL 104-321 (1996)

¹⁰ Art. XI, PL 104-321 (1996)

¹¹ Art. I, PL 104-321 (1996)

¹² Art. III, PL 104-321 (1996)

¹³ Art. IV, PL 104-321 (1996)

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differ between States. The only enumerated limitation in the EMAC is the power of arrest which can only be authorized by the supported State.¹⁴

- EMAC does not 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 military. Military force is not defined but should be read consistent with the basis in which the President may federalize the National Guard: war or national emergency¹⁵, terror or WMD attack¹⁶, and insurrection or rebellion.¹⁷
- EMAC also does not authorize or permit the use of military force of a nature that would violate Posse Comitatus Act (PCA) if conducted by regular Army or Air Force.¹⁸ Generally, the PCA prohibits federal military forces 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.¹⁹
- Supporting State National Guard forces in a State Active Duty (SAD) are not subject to the PCA but subject to supported State's approval by the Governor. Further, they are subject to the supported State's criminal laws.
- EMAC does not preclude any State from entering into supplementary agreements with another State or affect any other agreements already in force between States.²⁰ As such, supplementary agreements between the supported State and supporting State may be entered into to address unique State law issues or specific powers, duties, rights, and privileges, such as law enforcement and the power of arrest.
 - By illustration, a supplementary agreement may be necessary to specifically grant arrest powers to civilian law enforcement personnel from the supporting State who are trained for domestic response but withhold arrest powers to National Guard forces who are trained to a federal warfighting standard for OCONUS operations. A supplementary agreement may also be necessary to ensure supported State rules for the use of force are understood. A

¹⁴ Art. IV, PL 104-321 (1996)

¹⁵ 10 USC 12301 (2017)

¹⁶ Wherein the President may federalize National Guard in the event of WMD use/threat or terrorist attack/threat that would result in significant loss of life or property but only if the President determines the response will exceed the capabilities of local, State, and Federal civilian agencies. 10 USC 12304 (2017)

¹⁷ Wherein the President may call into Federal service members of the National Guard in case of attack, insurrection, or if the President is unable with the regular forces to execute the laws of the United States. 10 USC 12406 (2017)

¹⁸ Art. XIII, PL 104-321 (1996)

¹⁹ See DODI 3025.21, Defense Support of Civilian Law Enforcement Agencies, dated 27 February 2013, which explicitly does not apply to National Guardsmen in 32 USC 502 status or SAD.

²⁰ Art. VII, PL 104-321 (1996)

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[UNCLASSIFIED]

supplementary agreement could also be necessary if a supported State requires deputizing or swearing in as “special police”. A supplementary agreement can even be necessary as a matter of optics when utilizing nonfederalized but uniformed service-members for law enforcement of the civilian population²¹.

- As a matter of practice, supplementary agreements might not be needed for emergency service functions that are regulated and/or trained to a national standard, such as fire services, emergency medical services, or provided for under commonly implemented laws, such as Good Samaritan tort protection.
- One final note is that States are not precluded from making EMACs more restrictive. States can withhold other powers, duties, rights, and privileges, such as prohibiting the entering into supplementary agreements.



²¹ Supplementary agreements for optics purposes may even be good practice for States that have a State Defense Force or State Military Force under 32 USC 109, such as the Texas State Guard.

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APPENDIX F

CONUS Evacuations

CONUS Evacuation

I. Authorization

Military dependents and civilian employees and dependents are authorized evacuation allowances when authorized/ordered to leave a CONUS location because of unusual/emergency circumstances.

A uniformed service member cannot be evacuated. A member who is ordered to depart an area being evacuated must be in a temporary duty (TDY) or permanent change of station (PCS) status.

The decision to evacuate rests with the individuals listed in JFTR, par. U6051-B and JTR, par. C6010-B. The decision of local civil officials to evacuate an area is not sufficient. The appropriate authorizing official must authorize/order an evacuation since civil officials cannot obligate expenditure of DoD funds. Evacuation allowances can only be paid as of the date the evacuation is authorized/ordered. These allowances cannot be authorized retroactively.

The authorizing official may specify a limited evacuation location (dependents move from residence to the nearest available accommodations), any safe haven location within a specified distance from the evacuation location, or any CONUS safe haven location as appropriate (JFTR, pars. U6051 and U6052 and JTR, pars. C6010-D and C6015).

The authority for CONUS evacuations for civilian employees and dependents is Office of Personnel Management (OPM) regulations 5 CFR, Part 550, subpart D so the allowances differ from evacuation allowances from foreign locations which are prescribed by State Department in DSSR, Chapter 600, subpars. 611-639.

II. Transportation and Per Diem En Route to the Safe Haven Location

Dependents of uniformed service members and civilian employees and their dependents receive transportation and per diem for allowable travel time (excludes personal travel time) until they reach the safe haven location. Command-sponsored dependents age 12 or older receive up to the full locality rate and those under age 12 receive up to 50% of the locality rate. Per diem for departure and return days to the PDS are paid at 75% M&IE. A civilian employee/ dependent or a military dependent incident to a limited evacuation traveling by POC is paid the TDY mileage rate (currently \$.51/mile) (JFTR, par. U6053-I and JTR, par. C6300, sec. 550.405(a)). A military dependent traveling via a POC to and from a safe haven other than a limited evacuation is paid the PCS mileage rate (currently \$.23.5/mile) (JFTR, par. U6053-A).

If dependents travel to a location other than, or outside, the safe haven location, transportation costs are limited to the authorized location and the standard CONUS per diem rate applies at that location unless the alternate location is later approved by the authorizing/ordering official (JFTR, par. U6054-D6).

III. Allowances at the Safe Haven

Safe haven allowances (Subsistence expenses for employee and dependents) consist of two separate allowances: one for lodging and one for meals and incidental expenses (M&IE). The lodging allowance is paid for commercial quarters and must be documented by a receipt. Reimbursement for lodging is not authorized if staying with friends and relatives (JFTR, par. U6054-B1) for military dependents and not ordinarily authorized for civilian employees and dependents unless the traveler can substantiate additional lodging cost the host

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incurs (JTR, par. C4555-B3). Tax for lodging in the CONUS and non-foreign OCONUS locations is a separate reimbursable expense.

- 1st 30 days: Dependents age 12 or older receive up to 100% of locality rate. Dependents under age 12 receive up to 50% of the locality rate.

- Days 31-180: Dependents age 12 or older receive up to 60% of locality rate. Dependents under age 12 receive up to 30% of the locality rate.

Safe haven allowances/subsistence expenses may be paid for a period not to exceed 180 days after the effective date of order to evacuate (JTR, par. C6300, sec 550.405(b)).

If the military dependents or employee and/or family members remain in their home and do not choose to evacuate, they are not authorized safe haven/special allowances for subsistence.

IV. Escort Dependents

A member may be authorized roundtrip travel and transportation allowances to escort dependents incapable of traveling alone to the safe haven. This travel is official and in a duty status (JFTR, par. U6053-G).

V. Unaccompanied Baggage

Military dependents: Dependents of uniformed service members may ship up to 350 lbs of unaccompanied baggage per dependent age 12 or older and 175 lbs per child under age 12 up to a total of 1,000 lbs. (JFTR, par. U6056-A).

Civilian Employee dependents: There is no authority for unaccompanied baggage for civilian employees.

VI. Household Goods

Military dependents: Installation commanders have the authority to ship/store household goods (HHG) using local O&M funds, including quarters to quarters (government, privatized and local economy) moves and non-temporary storage (NTS) of HHG for quarters which become uninhabitable at CONUS locations due to a natural disaster. Local moves may be performed under JFTR, pars. U5355-C and D and NTS is authorized under par. U5380-G. These moves are funded by local installation support funds, and cannot be charged to evacuation funding appropriations. The order authorizing the move/storage will be IAW the applicable installations' local procedures.

Civilian Employee dependents: Movement of HHG to the safe haven may be authorized for other than a limited evacuation (JTR, par. C6010-C). Local moves may be authorized under JTR, par. C5154-K using local O&M funds. There's no authority for HHG storage.

VII. POV

Shipment of a POV to a safe haven is not authorized.

VIII. Local Travel Allowance

Military dependents: When a dependent is unable to drive a POC to the safe haven location a local travel allowance at the rate of \$25/day per family is authorized to partially offset expenses incurred for local travel (JFTR, par. U6060).

Civilian Employee dependents: There is no authority to pay a local travel allowance for civilian employees.

IX. Evacuation Termination

Decision is made by USD (P&R) or designated representative/ Secretarial Process (in limited evacuations the authority that authorized/ordered the evacuation may terminate the evacuation and authorize return to the PDS) (JFTR, par. U6052-D and JTR, par. C6300, sec. 550.407) to either:

1. return to the PDS,

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2. move military dependents to a designated place and civilian dependents to a final safe haven, OR
3. move to another permanent duty station (PDS).

If the family returns to the evacuated PDS, transportation and per diem as prescribed above is authorized and any HHG/unaccompanied baggage is returned to the PDS.

If civilian dependents move to a final safe haven, transportation and per diem as prescribed above, in addition to HHG from the evacuated PDS or safe haven to the final safe haven and safe haven allowances at the final safe haven (until a permanent residence is established provided the 180-day maximum is not exceeded) are authorized (JTR, par. C6010-C and C6300, sec. 550.407).

PCS allowances in JFTR/JTR, Chapter 5 are authorized for moves to another PDS.

Military dependents moved to a designated place are authorized PCS transportation and per diem to the designated place, unaccompanied baggage, HHG and POV transportation, Dislocation Allowance (DLA), and safe haven allowances at the designated place for up to 30 days while establishing a permanent residence (JFTR, pars. U6054-E, U6056-D, U6057, and U6059).

CHAPTER 6: EVACUATION TRAVEL

An evacuation is the authorized or directed departure from an area threatened by unusual or emergency circumstances in the continental United States (CONUS), in a non-foreign location outside the CONUS (OCONUS), or in a foreign location. The information in this chapter complements the Department of State (DoS) Standardized Regulations ([DSSR Chapter 600](#) (Payments During an Ordered/Authorized Departure) and the Office of Personnel Management (OPM) Code of Federal Regulation (CFR), [Title 5 U.S. Code \(U.S.C.\), Subpart D](#) (Payments During Evacuation). See Table 6-1 to determine which Agency’s evacuation policy applies in addition to the JTR.

Table 6-1. Identifying which Evacuation Policy to Follow			
Evacuee	Location Being Evacuated		
	CONUS	Non-Foreign Location OCONUS	Foreign
DoD Service Member’s Dependent	DoD	DoD	DoD coordinates with DoS
Non-DoD Service Member’s Dependent	DoD	DoD	DoD coordinates with DoS
DoD Civilian Employee	OPM	OPM	DoS
DoD Civilian Employee’s Dependent	OPM	OPM	DoS

0601 Evacuation Authority

The authority to evacuate an area depends on whether it is in the CONUS, a non-foreign location OCONUS, or a foreign location. Tables 6-1 through 6-12 identify who can evacuate a location at Government expense and who may authorize an evacuation, designate a destination, receive payments for an evacuee, terminate evacuation status, and authorize return to the evacuated area. Further authority for the allowances is in [37 U.S.C. § 475a](#), [5 U.S.C. § 5725](#), and [DoDD 3025.14](#) (Evacuation of U.S. Citizens and Designated Aliens from Threatened Areas Abroad) dated February 26, 2013.

060101. Authority to Order an Evacuation

A. Eligibility. A Service member’s dependent, a civilian employee, or a civilian employee’s dependent may leave a threatened area at their own expense. However, the Government authorizes evacuation allowances when one of the individuals or agencies identified in Table 6-2 or Table 6-3 orders or authorizes an evacuation.

B. Cuba Evacuation. The U.S. Naval Base at Guantanamo Bay, Cuba, is treated differently than other foreign locations during an evacuation because the DoS is not involved in the decision. While Guantanamo Bay is a foreign location and OCONUS allowances apply, the USD (P&R) has the authority to evacuate the U.S. Naval Base.

C. Limited Evacuation. A limited evacuation is a temporary relocation to the nearest available accommodations, which may be Government quarters. A limited evacuation is available from a CONUS location for a Service member’s dependent, a civilian employee, or a civilian employee’s dependent. The civilian employee and his or her dependent can also be authorized a limited evacuation from a non-foreign location OCONUS.

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Table 6-2. Authority to Order an Evacuation from a Location in the CONUS or a Non-Foreign Location OCONUS	
Service or Agency	Location Being Evacuated
	CONUS/Non-Foreign Location OCONUS
DoD Components (Service member's Dependent, Civilian Employee, and Civilian Employee's Dependent)	Any of the officials listed below may order or authorize an evacuation within their area of authority: <ul style="list-style-type: none"> ● Secretary of Defense (Sec Def) or his or her designee. ● Secretary concerned. ● Head of the Component or his or her designee. ● Commander of the Installation or the Coast Guard District Commander. ● Commander, head, chief, or supervisor of the organization or office.
National Guard Member's Dependent	State or Territory authority for the National Guard member serving on active duty or full-time National Guard duty under 32 U.S.C. § 502(f) .
U.S. Coast Guard, Only in Time of War	Secretary of Homeland Security or his or her designee.
U.S. Public Health	Secretary of Health and Human Services or his or her designee.
National Oceanic and Atmospheric Administration	Secretary of Commerce or his or her designee.

D. Foreign Locations. The DoS decides when the United States evacuates personnel from a foreign location. The DoD and DoS agree to share the responsibility in specific situations or locations, as specified in Table 6-3. If the DoS is not present in the affected area or cannot be contacted within a timely manner, then the Combatant Commander (CCDR), the senior commander in the country concerned, or the DoD Attaché is responsible for ordering or authorizing an evacuation.

Table 6-3. Authority to Evacuate from a Foreign Location	
Situation or Assignment	Authority
President declares a national emergency	Sec Def or his or her designee after consulting with the Secretary of State
Directed reinforcement of U.S. Armed Forces in a theatre	
Accommodation of force protection	
Antiterrorism considerations	
U.S. Country Team (DoD Attaché Offices, Marine Security Guard Detachments, DoD elements or personnel, and others as determined by the CCDR and Chief of Mission)	DoS
U.S. citizens in an area where the DoS is not present and cannot be reached in a timely manner, and time and communication systems do not permit the commander to receive authorization from the Sec Def or USD (P&R) without jeopardizing the evacuees	CCDR, the senior commander in the country concerned, or the DoD Attaché
U.S. Naval Base at Guantanamo Bay, Cuba	USD(P&R)

060102. Identifying Evacuees

A Service member is placed on a temporary duty (TDY) order or permanent change of station (PCS) order rather than placed in an evacuation status when required to leave a permanent duty station (PDS). A civilian employee can be evacuated, placed on a TDY order, or reassigned to a new PDS. Table 6-4

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identifies individuals who may be eligible to receive evacuation allowances when the designated Service or Agency specified in Table 6-2 or Table 6-3 orders or authorizes an evacuation.

Table 6-4. Who Can Be Evacuated at Government Expense			
Individuals	Location Being Evacuated		
	CONUS	Non-Foreign Location OCONUS	Foreign
Service Member	No	No	No
Service Member's Dependent	Yes	Yes	Yes
Dependent of Reserve Component (RC) Member on Active Duty or National Guard Member on Full-Time Duty under 32 U.S.C. § 502(f)	Yes	Yes	N/A
Civilian Employee	Yes	Yes	Yes
Civilian Employee's Dependent	Yes	Yes	Yes
Non-Command Sponsored Dependent	Not Applicable	Yes (transportation only)	Yes (transportation only)
Authorized Escort for a Dependent or Civilian Employee	Yes	Yes	Yes

060103. Choosing an Evacuation Destination

The anticipated duration of the evacuation is critical to determining whether a dependent travels to a safe haven or a designated place. A safe haven is a temporary location to which a dependent is sent. The safe haven and the evacuated area may be in the same city or country or may be in different cities or countries. If the conditions causing an evacuation are expected to improve and it is anticipated that the dependent will be able to return to the PDS, then the dependent is evacuated to a safe haven. A designated place is a location where a dependent will establish a permanent residence. If conditions are not expected to improve, then the dependent is evacuated to a designated place. The appropriate official determines whether an evacuee will go to a safe haven or a designated place.

A. Eligibility. The Government may provide evacuation allowances for a Service member's dependent, civilian employee, or a civilian employee's dependent when they evacuate to an authorized location selected by the authority in Table 6-2 or Table 6-3.

Table 6-5. Who Determines Authorized Destinations for a Service Member's Dependent			
Evacuation Destination	Location Being Evacuated		
	CONUS	Non-Foreign Location OCONUS	Foreign Location
Safe Haven	The authority who orders or authorizes the evacuation. See Table 6-2.	The authority who orders or authorizes the evacuation. See Table 6-2.	<ul style="list-style-type: none"> ● DoS with DoD coordination. ● USD (P&R) for U.S. Naval Station at Guantanamo Bay, Cuba.
Alternate Safe Haven	<ul style="list-style-type: none"> ● DoD Services obtain authorization from the Secretary concerned, to include choosing a 	Obtain authority for an alternate location within a safe haven through the Secretarial Process.	<ul style="list-style-type: none"> ● DoD Services obtain DoS USS (Mgt) authorization through the Principal Deputy USD (P&R) as part of the Secretarial Process for an

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Table 6-5. Who Determines Authorized Destinations for a Service Member's Dependent			
Evacuation Destination	Location Being Evacuated		
	CONUS	Non-Foreign Location OCONUS	Foreign Location
	safe haven OCONUS or moving to another safe haven when circumstances warrant. <ul style="list-style-type: none"> • Non-DoD Services obtain authorization through the Secretarial Process. • Obtain authority for an alternate location within a safe haven through the Secretarial Process, to include evacuation from one safe haven to another when circumstances warrant. 		alternate safe haven in a foreign OCONUS area. Non-DoD Services obtain DoS USS (Mgt) authorization, after which they obtain authorization through the Secretarial Process, including for travel and transportation from one safe haven to another. <ul style="list-style-type: none"> • Secretary of State authority is not required for an alternate safe haven in CONUS or non-foreign area OCONUS. • USD (P&R) authorizes or approves a safe haven in a non-foreign area OCONUS for DoD.
Designated Place	Effective December 11, 2017 <ul style="list-style-type: none"> • DoD Services obtain authorization from the Secretary concerned. • Non-DoD Services obtain authorization or approval through the Secretarial Process, including for OCONUS 		Effective December 11, 2017 <ul style="list-style-type: none"> • Principal Deputy USD (P&R) determines when a DoD dependent goes to a designated place. • DoD Services obtain authorization or approval from the Secretary concerned or the Secretary's designated representative for a designated place OCONUS. • Non-DoD Services, obtain authority through the Secretarial Process.

B. Additional Authority. Authorities for a civilian employee or a civilian employee's dependent are similar, but different than those for a Service member's dependent, as listed in Table 6-6.

Table 6-6. Who Determines Authorized Destinations for a Civilian Employee or a Civilian Employee's Dependent			
Evacuation Destination	Location Being Evacuated		
	CONUS	Non-Foreign Location OCONUS	Foreign Location
Safe Haven	The authority who orders or authorizes the evacuation. See Table		DoS with DoD coordination. USD (P&R) for U.S. Naval Station at Guantanamo Bay.

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	6-2.	Cuba.
Alternate Safe Haven	Obtain authority through the Secretarial Process.	Secretary of State through the Secretarial Process, then the Principal Deputy USD (P&R). See DSSR 614.
Designated Place	<ul style="list-style-type: none"> Secretary concerned or the Secretary’s designated representative. See pars. 6505-C and 6510-C. The JTR does not cover non-DoD civilian employees. 	

C. Evacuee Choice. When CONUS is listed as the safe haven, an evacuee must select the exact location within the designated geographic area. If the United States is listed as the safe haven, a DoD evacuee must select the exact CONUS safe haven. A safe haven in a non-foreign location OCONUS must be authorized or approved by USD (P&R) when evacuating from a foreign location. For evacuations from CONUS or non-foreign OCONUS locations the Secretary Concerned must authorize or approve a safe haven in a non-foreign OCONUS location (effective December 11, 2017). If the United States is selected as the safe haven for a non-DoD Service, the evacuee must select an exact U.S. safe haven location.

D. Alternate Safe Haven. A Service member or civilian employee may request permission for a dependent to evacuate to an alternate safe haven through the process described in Table 6-7.

Table 6-7. Requests for Alternate Safe Havens			
Location of Safe Haven			
Within a Safe Haven	CONUS	Non-Foreign Location OCONUS	Foreign
<ul style="list-style-type: none"> All Services must obtain formal permission through the Secretarial Process for dependents to receive authorization or approval. The Secretary concerned must determine that circumstances warrant the move before a dependent can receive travel and safe haven allowances based on the alternate location. 	Principal Deputy USD (P&R) must authorize or approve each individual request for DoD evacuees to move from one safe haven to another for the travel expenses to be reimbursed while considering the following: <ul style="list-style-type: none"> Family support at the requested destination. Co-location with the Service member at an alternate work site. Similar factors to support that relocation is in the Government’s best interest. 		
	DoS authorization is not required for an alternate safe haven, but the requests must go through the Secretarial Process.		<ul style="list-style-type: none"> The Service member’s or civilian employee’s command should request USS (Mgt) clearance through the Chief of Mission of the U.S. Embassy in the country where the Service member or civilian employee is assigned. See pars. 6015-B2 and 6565; and DSSR 614c. A DoD Service member or civilian employee must submit the request to the Principal Deputy USD (P&R) with the DoS authorization attached. The Principal Deputy USD (P&R) may authorize or approve the requests and associated travel and transportation allowances. A civilian employee’s travel and transportation allowances are effective no earlier than the request date for an alternate foreign safe haven OCONUS.

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Table 6-7. Requests for Alternate Safe Havens			
Location of Safe Haven			
Within a Safe Haven	CONUS	Non-Foreign Location OCONUS	Foreign
			<ul style="list-style-type: none">• A non-DoD Service member must obtain authorization through the Secretarial Process.

APPENDIX G
JOINT RECEPTION, STAGING, ONWARD MOVEMENT, AND
INTEGRATION (JRSOI)

Chapter VI

DESERT SHIELD RECEPTION

Although personnel were usually flown to the Gulf, most equipment and supplies were sent by sea. Close coordination among the entire transportation network was necessary to ensure that airlifted personnel reached the theater near the date their equipment was scheduled to arrive. Arrival of personnel before their equipment would increase the burden on the Saudi infrastructure. It also would expose troop concentrations in the port areas to possible enemy attack by ballistic missiles, aircraft, and terrorists.

SOURCE: *Conduct of the Persian Gulf War*
Department of Defense Final Report to Congress, April 1992

transition to theater responsibility can be facilitated by USTRANSCOM TCCs in conjunction with the Services and/or joint forces operating the air and sea PODs. Although the primary focus of reception is to receive, off-load, marshal, and transport deploying forces, the reception process inevitably shifts from receiving sustainment materiel, replacement equipment, and personnel to ultimately supporting redeployment operations of in-theater forces. At PODs, these activities may occur simultaneously with two-way traffic into and out of the theater. In all cases, detailed planning, force tracking, and the principles of movement control as described in Chapter V, "Movement," are essential to the overall success of reception.

d. **Command Relationships.** During deployment or redeployment to a new OA, the supported CCDR is responsible for JRSOI planning and execution. During redeployment to home station or demobilization station, the supported commander retains overall responsibility for the planning and execution of the redeployment operation. However, supporting Services or Service components, in coordination with the supported commander, plan and execute the JRSOI phase. The designated command, Service, or agency assumes responsibility for units and personnel when OPCON is relinquished IAW an appropriate order. Upon arrival at POD or other designated time and place, the unit changes OPCON to the designated commander. The supported CCDR relinquishes the OPCON or TACON over to the deployed unit and the unit is transferred back to the designated command or Service. The receiving command establishes the command relationships and plans and executes JRSOI. The latter task is normally assigned to a Service component or to a Service itself.

e. **Seaport and Aerial Port.** Capacities and throughput capabilities significantly influence the speed with which forces can be deployed, the order in which forces must be deployed, and, to a large extent, the types of units that can be deployed. Port efficiency or throughput is a function of the OE and the level of port modernization (developed versus undeveloped). Some instances may necessitate improving or constructing port facilities to meet operational requirements. In addition to the PODs and nodes, several other facilities and areas support the reception process.

f. **Marshalling.** Marshalling is an essential component of the reception process that facilitates port clearance. The timely movement of personnel, equipment, and materiel to

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a common assembly or holding area, preferably outside the port, gives the commander the first opportunity to reassemble mission capability. This very important task of assembling forces is often complicated by the fact that units may arrive in-theater at separate PODs and at different times. To further enhance port clearance, the CCDR should designate marshalling areas that support unit reassembly without impeding the arrival ports for follow-on units.

g. DOD uses the SPM approach for most APOD and SPOD operations. As outlined in the UCP, USTRANSCOM provides worldwide common-user aerial and seaport terminal management and may provide terminal services by contract. Thus, USTRANSCOM, through AMC and SDDC, will normally manage common-use aerial ports and seaports, respectively, for the CCDR. In areas not served by a permanent USTRANSCOM presence, USTRANSCOM will deploy an AMC or SDDC mission support element including aerial port or seaport expertise. If mobile C2 is also required, a mission support team or CRG will deploy, as well as the SDDC port management portion of JTF-PO to manage the ports in concert with the designated port operator. Based on availability of fixed-port terminals or OEs or requirement, the port manager may also serve as the port operator.

For more information on redeployment POD operations, see CJCSM 3122.02, Joint Operation Planning and Execution System (JOPES), Volume III (Time-Phased Force and Deployment Data Development and Deployment Execution).

h. **APOD Operations.** The APOD serves as the primary port of entry for deploying personnel, as well as for early entry forces and capabilities airlifted into theater. APODs may be operated in conjunction with the HN.

(1) **APOD Functions.** Numerous operational and support functions occur at the APOD. Primary operational functions are to receive, off-load, marshal, provide essential field services, and transport deploying forces and capabilities. Tasks include off-loading cargo (both equipment and materiel), arriving personnel in theater via personnel accounting systems, clearing personnel through air terminals, accomplishing movement control, and maintaining ITV. In addition to operational functions, there are APOD support functions as listed in Figure VI-3.

(2) **APOD Service Capabilities.** Various organizations provide the operational capabilities needed for APOD reception. For example, AMC, through its air mobility squadrons, aerial port squadrons/flight, and CRGs, provides much of the operational and logistic support needed to receive arriving aircraft. USN overseas air cargo terminal units unload aircraft and operate air cargo and passenger airheads. Through its cargo transfer capability, the Army provides the required support to interface with the CRG and begins the staging and onward movement phases for the deploying personnel, equipment, and materiel. When performing this mission, the Army element is often referred to as the A/DACG. Marine Corps units may also be given the A/DACG mission. In addition, HNS, provided under the provisions of an existing agreement or contracted port services, may be used to free up finite reception assets and minimize the logistic footprint at the APOD. Close coordination with HNS activities is necessary to

Chapter VI

balance the operational requirements of all organizations competing for limited resources.

(3) **APOD Infrastructure Optimization.** Several factors can impede APOD reception. However, the overriding considerations for any airfield operation are parking maximum (aircraft) on ground (MOG) and working MOG. Parking MOG is the number of aircraft that can fit, or be parked, on the ground at one time. Working MOG pertains to how many parked aircraft can be worked on at the same time based on available personnel, materials handling equipment (MHE), and ramp space. An airfield's MOG may not remain constant if it lacks a dedicated explosives pad. In these cases, the parking or working MOG will decrease as otherwise available adjacent aircraft parking spaces are removed while explosive cargo is off-loaded from another aircraft. Local commanders determine working MOG based on the most restrictive of multiple planning factors (e.g., manpower, servicing equipment) and notify appropriate C2 and planning organizations for dissemination. Service and HN operators must ensure their activities do not reduce MOG capacities.

(4) **APOD Joint Use.** Another consideration is ownership and management of the APOD facility. The APOD may be controlled and/or operated by various HN military and civilian organizations. Additionally, other military and commercial activities may compete for limited facilities. These competing requirements may complicate unity of command and may limit or reduce facility throughput capacities available for reception of forces. To overcome this obstacle, clear C2 relationships must be established by the JFC for all APODs and JRSOI functions.

i. **SPOD.** Historically, 90 percent of a deploying force's equipment and materiel are delivered to the theater via strategic sealift. Three types of seaports can function as a SPOD: **fixed**, which are improved, world-class ports (i.e., Dammam, Saudi Arabia, and Pusan, Korea); **unimproved or degraded** ports (i.e., Somalia and Haiti); and **bare beaches** where fixed facilities are unavailable.

(1) **SPOD Functions and Responsibilities.** Responsibility for essential SPOD functions is shared between HN seaport organizations and DOD organizations such as



Figure VI-3. Aerial Port of Debarkation Support Functions

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MSC and SDDC, military terminal service units, and contractors. Examples of SPOD functions are shown in Figure VI-4.

(2) SPOD operations are normally conducted at established, fixed maritime terminal facilities, such as a sea or inland maritime port. Pre-positioned port opening packages are an option available to the CCDR through the different Services' pre-positioned equipment located either in-theater or afloat. Pre-positioned port opening packages may be capable of operating a maritime terminal and providing the necessary capability to receive forces.

(3) SPOD maritime terminals include both seaports and inland water facilities capable of receiving deep draft vessels, coastal vessels, and barges. Many established terminals have a transportation infrastructure in place such as railways, highways, inland waterways, and adjacent airfields. Although terminal facilities vary, many are already equipped to handle roll-on/roll-off vessels, containers, general and bulk cargo, and lighterage.

(4) JLOTS is an option available to receive the force when debarkation at an established port is impractical or not available. In addition, JLOTS may also provide increased capability to operational fixed ports. In JLOTS, USN and USA logistics over-the-shore forces conduct operations together under a JFC. JLOTS operations are conducted over unimproved shorelines, through fixed ports not accessible to deep draft vessels, and

Seaport Of Debarkation Functions

- Seaport management
- Cargo offloading, documentation, and clearance
- Berthing and Chandler services
- Ship arrival and departure coordination
- Coordination for transportation for onward movement
- Movement control from seaport of debarkation to marshalling area
- Hazardous cargo handling
- Port support activity
- Transient ship services
- Field services
- Medical support
- Contract and demurrage
- Holding area operations
- Maintenance and logistic support for arriving forces
- Port security and force protection

Figure VI-4. Seaport of Debarkation Functions

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through fixed ports that are inadequate without the use of JLOTS capabilities. JLOTS operations should be considered when port throughput capacity or reception capability is inadequate to support planned joint force operations or to augment port reception capability to handle the surge of major combat forces during the early stages of deployment operations. The magnitude of JLOTS operations extends from the reception of ships for off-load through the onward movement of equipment and materiel to inland marshalling areas and SAs.

For further information on JLOTS, see JP 4-01.6, Joint Logistics Over-the-Shore.

(5) The SPOD will contain facilities and organizations, both military and civilian, to perform many of the APOD functions described earlier. One of the key organizations for SPOD operations is the PSA and/or port operations group (POG). It is a temporary organization that aids the port commander in receiving, processing, and clearing cargo. The PSA is under the OPCON of the SPM at common-user seaports. For seaports not designated as common-user seaports, the GCC designates the port manager, whereas the POG remains under the OPCON of the logistic combat element and/or landing force support party. PSA and POG functions are shown in Figure VI-5.

j. Transportation systems are crucial to the timely and efficient reception of deploying forces at the SPOD. The supported commander should consider all available resources, geography, transportation capabilities, climate and seasonal changes, and distance between LOC nodes, as well as projected requirements for movement of the forces from the SPOD. When selecting a SPOD, the supported commander should consider the transportation infrastructure, as well as the capacity of the port to handle potential throughput and surges of deploying forces. A robust multi-modal system of inland transport options (i.e., rail, road, air, inland waterway) is vital in efficiently receiving and moving the force to SAs.

k. **Reception Considerations.** To support operations at the APOD and SPOD, conditions that support the JRSOI process should be considered. The CDR should determine the type of support units and the composition and/or method of sustainment

Port Support Activity and Port Operations Group Functions

- Receive and stage unit equipment in marshaling areas.
- Correct configured equipment and cargo deficiencies.
- Serve as vehicle operators.
- Assist in the servicing of self-deploying aircraft.
- Provide necessary maintenance and recovery capability.
- Assist the port commander with cargo accountability.
- Provide for security of sensitive and classified cargo.

Figure VI-5. Port Support Activity and Port Operations Group Functions

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support necessary to carry out reception. The CCDR may consider the most capable Service or predominant user options when configuring the support structure.

(1) **Economy of Resources.** CCDRs should tailor their reception operations to provide efficiency and economy, as well as eliminate duplication of limited resources among the Services. The decision by the JFC to establish a joint reception center maximizes use of scarce resources. Efficient resource management of limited transportation assets and reception facilities assists in optimizing reception throughput. Discharge workload should not exceed POD throughput capacity. A time-phased build-up of reception capabilities may accomplish this. At the same time, however, the JFC must configure reception forces to handle potential surge capacities of strategic deployment and provide intermodal services for transshipment of arriving cargo and supplies.

(2) **C2.** C2 functions are essential to the successful reception of forces into an OA and are the responsibility of the supported CCDR. Prior to commencement of deployment and reception operations, the JFC should develop an in-theater structure for executing C2 of JRSOI operations. This structure must address the integration of USTRANSCOM assets into the overall C2 for JRSOI to be an efficient operation. Some C2 assets may be pre-positioned in theater, geographically in close proximity to the region, or afloat on MSC or maritime pre-positioning force vessels. Successful execution of a reception operation involves a centralized C2 structure (unity of command), decentralized execution, and disciplined (synchronized and balanced) movement control. Monitoring and control of deployment operations will be ongoing throughout all segments of JRSOI and will involve joint and theater movement control organizations using joint ITV systems. The following C2 functions (mission and situation dependent) are examples of what may be required to successfully execute reception functions at APODs and SPODs:

- (a) Maintain unity of effort for all primary and secondary LOC nodes.
- (b) Coordinate, control, and monitor US airlift and sealift operations into APODs and SPODs.
- (c) Designate marshalling area.
- (d) Provide personnel and cargo clearance of arriving forces.
- (e) Provide for personnel, equipment, and materiel accountability.
- (f) Determine security risk.
- (g) Provide movement control of arriving personnel, equipment, and materiel.
- (h) Provide visibility over arriving and departing personnel and cargo by input of AV source data into appropriate AIS.

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(i) Liaise with HN military and civilian officials to obtain required clearances and support.

(j) Coordinate and control loading and off-loading from aircraft and ships.

(k) Coordinate and control personnel and cargo movements from PODs via surface and air to planned holding areas.

(l) Monitor and manage the TPFDD.

(m) Coordinate and control movement of noncombatants.

(n) Provide clearance for intratheater airlift cargo movements.

(o) Provide distribution management for the theater and arriving unit command structures of all arriving personnel, equipment, and materiel.

(p) Provide intermodal services for transshipment of arriving cargo and supplies.

(q) Provide, coordinate, and control construction in support of personnel and cargo movement.

(r) Provide life support facilities.

(3) **Communications.** Effective communications and collaboration, vertically and horizontally, is essential for JRSOI due to the complexity of the operation. Timely and reliable communications should be continuous among all JRSOI participants, both supporting and supported. The following communications functions may be required to successfully execute JRSOI operations:

(a) Establish links between LOC nodes.

(b) Use automation technology. Communications should utilize advanced technologies that will be both an enabler and force multiplier of the reception process. The AISs and the COP described in Appendix A, "Information Technology Enabling Tools," are crucial to ensure the commander has access to interactive decision quality information (e.g., integrated, real-time, AV) on personnel, installations, finances, and equipment/materiel. Through Global Combat Support System (GCSS)/IGC programs, commanders can obtain AV, as well as manage the flow of forces in-theater and through the numerous PODs. Establishing a reliable network to disseminate this valuable information to all Services involved in the reception phase must be a priority for those units with GCSS and IGC capabilities.

(c) Provide LNOs. Effective liaison among the Service components and with HN agencies is paramount for effective communication to occur during the entire reception operation.

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(d) Monitor IGC and JOPES to provide real-time force tracking information of deploying forces and non-unit replacement personnel. Monitor AV using IGC to provide near real time tracking of non-unit sustainment items for all organizations and activities.

(e) Provide for reliable and compatible two-way communications between joint forces.

(4) **Protection.** Deploying forces, as well as intertheater airlift and sealift assets, may be the most vulnerable during loading or discharge. The threat must be considered in light of the concentration of forces within the limited confines of a POD. As units move forward to secondary LOC nodes, they remain vulnerable until fully integrated into a mission-capable force. Protection capabilities and/or measures should be integrated into the reception plan. The CCDR is responsible for providing the assets needed to protect the force throughout the entire reception process. Protection functions should:

- (a) Provide air defense.
- (b) Maintain coastal, harbor, and inland waterway defense.
- (c) Provide APOD and SPOD facility defense.
- (d) Provide military police support.
- (e) Establish joint security coordination center for security oversight.
- (f) Prepare for the effects of NEO on JRSOI operations.
- (g) Provide protection against CBRN threats.
- (h) Protect LOCs.
- (i) Provide a personnel recovery capability.

For further information on security operations, see JP 3-10, Joint Security Operations in Theater.

(5) **Transportation.** All three elements of a transportation system (mode operations, terminal operations, and movement control) should be integrated early into the TPFDD flow to provide adequate reception capabilities for the deploying forces. These elements may be RC assets that must be mobilized and flow early in the TPFDD. Essential to any JRSOI mission is an executable plan that facilitates intratheater transportation between nodes. The primary transportation nodes and the extended LOCs should be mutually supportive of the principle of unit integrity. To transition from strategic intertheater deployment to in-theater reception, the following transportation functions may be required:

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(a) Place port-opening force packages at PODs providing hand-off of deploying personnel, equipment, and materiel.

(b) Employ movement control principles. Movement control coordinates all aspects of transportation: modes, nodes, and terminals. It includes Service-organic capabilities, HNS, and supporting commands.

(c) Have a support element for off-loading of arriving forces.

(d) Provide intratheater air and surface transportation assets.

(e) Manage and monitor the TPFDD.

(f) Establish theater LOC nodes and links required to meet the anticipated transportation and throughput capacities. Allow for sufficient coordination to ensure timely movement of cargo and equipment through the port to minimize port congestion.

(g) Identify, assess, and provide for required physical transportation capacities and capabilities (ports, airfields, rail and road networks, littoral and inland waterways, and communications infrastructure).

(6) **Supply and Services.** Supply and services compete for limited strategic lift resources as the priority is on receiving and moving the force forward into the theater. However, sustainment of the force while transitioning into the theater cannot be forgotten and neither can the resources that will be required to sustain reception. The CCDR should provide arriving personnel, equipment, and materiel with required life support and field services until unit personnel are reunited with their supplies and equipment and become self-sufficient. These services may be RC assets that must be mobilized and flow early in the TPFDD. The following are typical categories of support that may be provided to sustain newly arriving forces in-theater:

(a) Field and life support services such as food, water, lodging, and sanitation.

(b) Maintenance and operator support for deploying equipment, vehicles, rotary-wing aircraft, fixed-wing aircraft, and tiltrotor aircraft.

(c) Munitions storage and handling.

(d) Petroleum products storing and handling.

(e) Power and power generation.

(f) Medical support and evacuation.

(g) Mortuary affairs services.

(h) Frustrated cargo storing, handling, and processing.

(i) Postal support.

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(7) HNS as a potential force multiplier should be planned and coordinated well in advance of an actual deployment. This can best be accomplished through coordination with the US country team (ambassador and staff), if one exists within country. The effect of a well-planned HNS agreement should be a reduction of the US military logistic footprint in-theater and a concurrent reduction in the need for early deployment of supporting units. Some HNS considerations are to:

(a) Augment reception capabilities early in the deployment cycle with dedicated units if civilian or military HNS are not available at APODs and/or SPODs to quickly throughput combat forces.

(b) Analyze the PODs' and in-theater transportation infrastructure's capacity.

(c) Anticipate limited materiel, key services, and HNS in-country.

(8) **Contractor support** for materiel requirements is another force multiplier and, like HNS, should be planned and coordinated in advance of an actual deployment. Normally, HNS will be considered first before a decision is made to contract for required support. When contact support is anticipated, the following considerations apply:

(a) The supported CCDR should ensure early deployment of contracting, financial management, and legal personnel to accomplish the contracting actions. Contracts will not be without cost, nor should deploying forces expect to have unlimited access to local facilities and resources.

(b) In most cases, military forces will have to share and compete with HN military, civil, and commercial operations for scarce resources and facilities.

(c) CAAF and their equipment may be deployed with US forces on DOD-provided lift, or they may deploy using commercial assets.

(d) JFCs, Services, and CAAF must coordinate to ensure they are not competing for the same lift or space during JRSOI operations.

5. Staging

a. **General.** This section describes the staging process and the activities that may be performed in theater SAs during deployments and redeployments to a new OA, or at SAs designated near CONUS or OCONUS PODs during redeployments to home or demobilization station. Regardless of where staging occurs, the activities associated with staging will generally include assembling, temporary holding, and organizing of arriving personnel, equipment, and materiel into units and forces, and preparing them for onward movement and employment by the JFC. Operability checks will need to be performed on equipment and vehicles to ensure their combat readiness, and loads will need to be sequenced and loaded in preparation for onward movement. During staging, deploying forces have limited mission capability and may not be self-sustainable. The CCDR should provide facilities, sustainment, life support, and protection until deploying units

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regain their combat or mission capability. Redeployment back to home or demobilization station will largely be a Service responsibility as forces and equipment are processed back into their respective Service and are reset. Three essential force-related activities that occur during staging are depicted in Figure VI-6.

b. During deployment or redeployment to a new OA, a major focus of JRSOI specifically during staging is building capabilities required by the JFC. Mission success requires actions to:

- (1) Determine combat capability.
- (2) Determine logistic capability and sustainability.
- (3) Determine how to track and visualize combat power.
- (4) Establish an incremental buildup of combat power.
- (5) Prioritize and adjust the flow as needed.
- (6) Manage and supervise the unit's progress.

(7) Develop a complementary tracking system that applies to combat operations as well as JRSOI.

c. **Deployment force tracking** aids in predicting the unit's arrival time in theater and incremental build of mission capability. The supported CCDR's staff supports the operational commander in force tracking by providing visibility of deploying forces and materiel. Force tracking includes the following steps:

- (1) Elements are monitored until they are reassembled.
- (2) Unit commander reestablishes control of the unit.
- (3) Unit becomes capable of sustaining itself.
- (4) Unit can perform assigned missions.

Staging Force-Related Activities

- Units assemble into a mission-capable force.
- Units of the force prepare to conduct their missions.
- The force prepares for onward movement (if required) and subsequent integration into the theater operation.

Figure VI-6. Staging Force-Related Activities

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(5) Unit completes onward movement and integration.

d. **SAs.** SAs are specific locations along the LOCs. The CCDR usually designates specific locations for staging to provide space and focus resources to support staging operations. SAs provide the necessary facilities, sustainment, and other support to enable units to become mission-capable. The size of the deployment or redeployment and location of the PODs and marshalling areas may necessitate multiple SAs.

(1) In selecting the location of the SAs, the CCDR plans where forces will be strategically concentrated to enter the OA. The CCDR evaluates the location of TAAs or OAs, geographic constraints, availability of organic and HN assets, transportation infrastructure, distance to the ports, and protection considerations. These factors, along with the physical dimensions of the theater, ultimately determine the location of the theater SAs.

(2) The size of the SA is influenced by numerous variables, including the anticipated flow of forces in theater, space available, and threat. The TPFDD is an important tool for the CCDR to use in understanding the requirements for SAs.

(3) **ISB.** During deployment, the theater operational situation may necessitate the establishment of an ISB outside of the combat zone or JOA prior to inserting the forces. If established, the ISB is an initial theater staging facility. Deploying forces debark from strategic lift, reassemble, and prepare to accomplish assigned missions. The theater may not have the physical infrastructure to support JRSOI and will require the use of air and sea bases outside the region. ISBs serve as a principal staging base to secure a lodgment to project the force for the rapid delivery of combat power to an AOR and can perform selected operational-level tasks. In some instances, an ISB is also used to transition from intertheater lift to intratheater lift to increase the number of points of entry available to the force to mitigate antiaccess measures.

(4) During redeployment to home or demobilization station, staging activities will be different. Since forces and equipment are being staged in preparation to being assimilated back into their respective Services, these activities will focus on assembling and processing personnel, receiving WRM and other equipment and coordinating their onward movement, performing any necessary operation checks, and reporting status to facilitate ITV.

6. Onward Movement

a. **General.** This section describes systems and processes for accomplishing the onward movement of deploying or redeploying forces. Onward movement is the process of moving forces and sustainment from reception facilities and marshalling or SAs to TAAs or other operating areas. Rail, road, inland or coastal waterway, and/or air can be used to accomplish this movement as may intra-theater lift. Challenges associated with onward movement during a deployment or redeployment to a new OA may include establishing distribution networks, limited LOC capacity, degraded LOC conditions, the potential for enemy interdiction, and reporting and movement control procedures. Onward movement

OPERATION JOINT ENDEAVOR

"At the time of execution, the rail deployment plan was based on an invalidated deployment rate (20 trains per day). At the planned rate of movement, the division could deploy the bridge opening package, open the ground lines of communications, accomplish the transfer of authority, and begin enforcement of the ZOS [zone of separation] by D+30. As the deployment began, it rapidly became apparent that the rail LOC [line of communications] would only throughput about half of the planned deployment rate. As a result, ad hoc force tailoring decisions had to be made to compensate for the reduced rail lift capacity."

SOURCE: Initial Impressions Report
Operation JOINT ENDEAVOR, 1995

during redeployment to home station or demobilization station will be planned and executed by the owning Service and focus on moving returning units from the POD. Transportation from the POD may be arranged for by a Service or USTRANSCOM depending on mode selected to move the returning forces.

b. The deployment and redeployment processes share most of the activities associated with onward movement particularly during a redeployment into another GCC's AOR. However, in the case of redeployment to home or demobilization station, efforts are largely focused on conducting movement control operations as units and equipment make their way to their destinations. These destinations could be the home station or, in the case of equipment, a depot maintenance facility for refurbishment or remanufacture. Some challenges to onward movement are establishing the distribution network, enemy interdiction, reporting procedures, and movement control.

c. Efficient onward movement of personnel, equipment, and materiel requires a balanced, integrated system of node operations, movement control, mode operations, and cargo transfer operations. The onward movement process encompasses support to all Service components of a joint operation, and often includes HNS. As in all JRSOI activities, onward movement of personnel, equipment, and materiel is prioritized according to the CCDR's needs. Onward movement is complete when force elements are delivered to the designated location at the designated time.

d. **Enablers of Onward Movement.** Key elements of the onward movement process are speed of movement and information flow. Speed of movement is vital for protection and mission accomplishment. Information flow encompasses locations and capabilities of forces, projected and actual arrival times at en route and final destinations, and component commands' ability to affect the movement. Successful onward movement of deploying/redeploying forces can be viewed in the context of eight onward movement enablers as explained below.

(1) **Movement Control.** Establishing and maintaining effective movement control is essential during the onward movement segment. JP 4-0, *Joint Logistics*, describes a variety of options available to the CCDR to execute and control joint

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logistics to include coordinating and synchronizing movement control. To ensure a fully integrated and responsive transportation system, the CCDR should consider assigning responsibility for theater transportation movement control to the JDDOC. The JDDOC must be equipped with sufficient communication and automation capability to ensure adequate interface between strategic and theater transportation systems and the CCDR's staff. Service components also have capabilities to coordinate and synchronize movement control. The Army has various movement control organizations while the Marine Corps has movement control centers (MCCs) planned for all deploying units from the Service component level down to the battalion and squadron level. They are the MDDOC, the MAGTF MCC, and the unit MCCs.

(a) **If a joint movement control organization is established using assets from multiple Services, then the CCDR conducts joint training to ensure personnel understand and can operate movement control equipment and C2 processes.** The CCDR should task-organize the movement control functions commensurate with the mission, size, and geography of the OA.

(b) The ITV systems provide a capability vital to coordinated onward movement. They provide a means to track units, personnel, equipment, and materiel en route from reception areas to SAs and forward to the assembly areas. The physical capabilities and limitations of the distribution network, along with the effects of combat, can limit the ability to execute onward movement as planned. Thus, connectivity is essential to provide ITV information to enable successful execution of onward movement to include location, characteristics, and capacities of roads, aerial ports, and rail lines, combined with current status of highway regulation, traffic circulation and surface distribution plans, and movement programs.

(2) **Communications/Automation.** Movement control elements should be equipped with sufficient communication and automated systems to ensure adequate interface between strategic and theater transportation systems and the CCMD's staff. They should be skilled in coordinating and directing theater transportation operations in support of unit movements and/or logistic resupply operations.

(3) **Transportation.** Nodes, main supply routes (MSRs), and HN assistance should be coordinated to maximize the speed of movement. Close coordination is essential for minimizing congestion because in most cases the Services, multinational units, and HN populace will be using the same networks. It is essential capacities and capabilities of the transportation network are balanced against the movement requirements so nodes and routes are neither saturated nor underutilized. As previously explained, the designated movement control element is responsible for coordinating the use of all theater transportation resources with USTRANSCOM and its TCCs, other CCMDs, and the HN.

(4) **Supply and Services.** During deployment or redeployment to a new OA, en route support nodes along the theater LOCs provide security, life support, refueling, limited vehicle maintenance, and vehicle recovery. The size of the support centers will be based upon the available facilities, length of route, and volume of equipment and

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personnel transiting the sites. Various types of en route facilities that support onward movement include:

- (a) Aircraft en route support sites.
- (b) Convoy support sites.
- (c) Trailer transfer points.
- (d) POL transfer points.
- (e) Pre-positioned equipment sites.
- (f) Pre-stock supply points.
- (g) Railheads.

(h) Of the above listed facilities, convoy support sites are among the most critical and provide the bulk of en route support during onward movement. Services provided by convoy support sites may be tailored based upon such factors as distance between LOC nodes; number and location of support bases; and MSRs⁷ congestion, condition, and protection. Convoy support sites usually provide support in the following areas:

1. Administration and communications.
2. Refueling.
3. Dining and billeting.
4. Latrines.
5. Laundry and showers.
6. Vehicle recovery and maintenance.
7. Medical.
8. MHE and cargo-handling equipment.
9. Security (force protection).

(5) **Force Protection.** Protection is critical to onward movement because it minimizes enemy opportunities to inflict serious losses and delays. The threat of enemy interdiction to onward movement of forces presents a special challenge to the commander. The CDR should assume interdiction of the LOCs will form an integral part of enemy strategy and should plan operations to preclude them from impacting onward movement.

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(a) GCCs are faced with many threats as their forces conduct tactical convoy operations. Threats to operations range from vehicle-borne improvised explosive devices (IEDs) to complex ambushes employing other types of IEDs, rocket-propelled grenades, CBRN hazards, and small arms fire.

(b) Tactical convoys are combat operations. Although contact with enemy organized/uniformed ground forces may not be anticipated, security against anti-US forces, enemy sympathizers, and IEDs must be maintained and the convoy must be prepared to take immediate action against an enemy threat. To accomplish this, tactical convoys require additional planning and coordination beyond normal line-haul operations. A main enemy tactic is to target the convoy LOCs, supplies, and other government resources. To defeat this tactic, each tactical convoy must be prepared to take the necessary actions in the face of ambush and defeat enemy forces once contact is gained, thus retaining the initiative and deterring future attacks.

For further information, see Army Techniques Publication (ATP) 4-01.45/Marine Corps Reference Publication (MCRP) 4-11.3H/Air Force Tactics, Techniques, and Procedures (AFTTP) 3-2.58, Multi-Service Tactics, Techniques, and Procedures for Tactical Convoy Operations.

(c) **Protecting the LOCs.** The JFC is responsible for LOC security. It may be necessary to commit combat capabilities to secure LOCs to ensure the incremental build of combat power is not interrupted. In addition, alternatives such as rerouting or mode substitution may be required (i.e., air and sea LOCs to replace or supplement ground LOCs) if preventive and preemptive measures fall short.

(6) **HNS resources and facilities** are important to the successful employment, deployment, and redeployment of forces. HNs can often provide a variety of services through their national agencies and can support onward movement in a wide range of categories. Some of these categories are shown in Figure VI-7.

(7) **ACSAs** provide US pre-negotiated support for contingency operation potential war scenarios. ACSAs provide the legal authority for the US military and armed forces of other nations to exchange logistic goods and services. Transactions under this program require reimbursement, replacement in kind, or exchange for equal value, which may not always be the case with HNS agreements. Legal advice should be sought before executing transactions with other nations for the exchange of goods or services.

(8) **Operational Contract Support.** Contractor support for onward movement is another force multiplier which should be planned and coordinated in advance of an actual deployment. There are several benefits in relying on commercial industry to provide equipment and manpower to move unit equipment. The redeploying unit does not have to convoy its equipment from the POD to its TAA/forward operating base, nor does it need to provide a PSA. In addition, the theater requires fewer transportation units as transportation assets are provided by the commercial carrier. This is a valuable service in cases where US forces are unavailable or may not be allowed entry into a country where US cargo must transit. An example of this is the Afghanistan ground LOC operations.

Host-Nation Support to Onward Movement

- Combat service support (food, water, lighting, billeting, showers, and latrines)
- Security
- Communications
- Materials and cargo handling
- Ground transportation (buses, line haul, and heavy lift)
- Convoy, road, rail, and diplomatic clearances

Figure VI-7. Host-Nation Support to Onward Movement

7. Integration

a. **General.** This section describes the integration process and key integration activities to successfully unite deploying forces into the theater command structure or return them to their home or demobilization station. Effective integration is the key element and ultimate objective of JRSOI. It is normally accomplished concurrently with other deployment and JRSOI tasks and occurs as soon as practicable along the JRSOI continuum.

b. During deployment or redeployment to a new OA, integration is the synchronized transfer of mission-ready forces and capabilities into the CCDR's force and, based on the complexity of the operation, may take hours or days to complete. The complexity and time required for integration depends on the size, contingency conditions, coordination and planning, C2 communications, and security available to manage the deploying or redeploying force. Integration is complete when the receiving commander establishes C2 over the arriving unit and the unit is capable of performing its assigned mission. Force tracking culminates in force closure as reported by the commander of the unit. In deployment operations, force closure occurs when the supported commander determines the deploying force has completed movement to the specified OA/destination with sufficient resources and is ready to conduct its assigned mission. In redeployment operations, force closure occurs when the designated commander or Service determines that the redeploying force has returned to home station or other follow-on destination. The designated commander or Service will report force closure during redeployment to home/demobilization station or other follow-on destination based on Service guidelines.

(1) During execution, the deploying force commander reports that the levels of readiness prescribed by the supported CCDR have been achieved and that integration into the higher HQ is imminent. The supported CCDR is concerned with the following:

- (a) Location of the forces.
- (b) Capability of the forces.

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- (c) Projected and actual arrival time at destination.
- (d) Commander's capability to affect the movement.
- (e) Additional transportation needed (modes, quantities).

(2) During deployment or redeployment to a new OA, integration has two major prerequisites: the unit must be mission-capable and must be integrated into the C2 processes of its higher HQ. Deploying forces must be organized back into operational units, integrate their C2 systems and combat support systems with the supported command, conduct any final requisite training or mission rehearsals, confirm their mission readiness, and finally report force closure.

(3) Tracking the components of building mission capability as a precursor to integration is essential for overall mission success. To track mission capabilities, the components of mission capabilities must be known.

c. Monitoring mission capability, early and continuous coordination, and planning can help reduce integration time. Units can establish predeployment liaisons to exchange information, standard operating procedures (SOPs), and communication networks, as well as plan for and prioritize an in-theater incremental buildup of combat power. Once established, the liaison is maintained to update information (intelligence, situation, mission, deployment timeline) to expedite the in-theater integration.

d. **Integration Functions.** Unlike the functions described in reception, staging, and onward movement, the emphasis during integration is on C2 and communications as personnel, equipment, and materiel enter the theater and prepare for integration. Critical to this is the COP as described in Appendix A, "Information Technology Enabling Tools." Force tracking of mission capability components helps predict when integration can begin and how long it will take to complete. Protection is still critical but may be easier as security forces reestablish their military capability during staging and onward movement. However, to accomplish integration of the force, the logistic support should be transferred from JRSOI supporting organizations to the gaining command.

(1) Upon notification of deployment or redeployment, a liaison between the deploying/redeploying unit and receiving HQ should be established to enhance integration. This liaison is conducted through formal liaison teams attached to the arriving and receiving HQ (the preferred method) or remotely through communication channels. The size and makeup of the liaison teams are based on the mission and operational conditions.

(2) Effective liaison enhances the commander's confidence in planning, coordinating, and executing integration. Subordinate commanders may use an LNO to obtain necessary information such as common coordination measures; tactics, techniques, and procedures; SOPs; rules of engagement; terms; symbology; and exercises.

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APPENDIX H

Statutory Authority for Accessing the Reserve Component

War or Declared National Emergency	Domestic Emergencies	Operations During Peacetime	Peacetime Status Quo No outside threat or emergency
<p>10 USC 12301(a) Full Mobilization Applies to all reservists & retired for duration plus 6 months</p>	<p>10 USC 12302 Partial Mobilization Up to 1,000,000 Ready Reservists only after POTUS declares national emergency</p>	<p>10 USC 12304 Presidential Reserve Call-up (PRC) 200,000 SELRES for 1 year, up to 30k IRR, but requires no declaration of war or emergency</p>	<p>10 USC 12301(b) Limited to 15 days; interpreted to be unavailable if AT already completed during FY; requires consent of Governor for NG</p>
<p>10 USC 12302 Partial Mobilization* No more than 1,000,000 Ready Reservists for up to 2 years; no stand-by or retired</p>	<p>10 USC 12301(b) Limited to 15 days; interpreted to be unavailable if AT already completed during FY; requires consent of Governor for NG</p>	<p>10 USC 12301(b) Limited to 15 days; interpreted to be unavailable if AT already completed during FY; requires consent of Governor for NG</p>	<p>10 USC 10147 Ready Reserve 48 drills and 14 days AT per year or not more than 30 days active duty a year</p>
<p>10 USC 12304 (PRC) 200,000 SELRES for 1 year, up to 30k IRR, but requires no declaration of war or emergency</p>	<p>10 USC 12304 (PRC) Cannot be used for rebellion, insurrection or domestic disasters (only necessary operational missions & WMD)</p>		
<p>10 USC 12301(d) Volunteers Applies to all reserves, but Governors must consent to use of NG; no duration limit</p>	<p>10 USC 12301(d) Volunteers Applies to all reserves, but Governors must consent to use of NG; no duration limit</p>	<p>10 USC 12301(d) Volunteers Applies to all reserves, but Governors must consent to use of NG; no duration limit</p>	<p>10 USC 12301(d) Volunteers Applies to all reserves, but Governors must consent to use of NG; no duration limit</p>
<p>10 USC 12307 Retired Reserve Authorizes the order to active duty of a retired reserve in accordance with 12301(a) or 688</p>	<p>10 USC Chapter 15 National Guard Call militia or "armed forces" to suppress rebellions or unlawful assemblages or obstructions against the US or a Territory</p>	<p>10 USC 12406 Guard Only President may call up militia to repel invasion, suppress rebellion, or execute U.S. law; §331 (Insurrection Act) requires state request</p>	
<p>10 USC 12305 Stop-loss President may suspend reserve promotion, retirement and separation laws</p>	<p>14 USC 712 Coast Guard Up to 30 days within 4 months or 60 days within 2 years for emergency augmentation</p>	<p>14 USC 712 Coast Guard For natural or man-made disasters to augment Coast Guard in emergency</p>	
<p>10 USC 12311 Active Duty Agreements Members on active duty agreements can be held on AD in war or emergency</p>	<p>10 USC 688 Retired Members May order retired to AD IAW DOD regulations in interests of National Defense</p>	<p>10 USC 688 Retired Members May be ordered to active duty at any time in interests of national defense</p>	<p>10 USC 688 Retired Members May be ordered to active duty at any time in "interests of national defense"</p>
<p>10 USC 6485 Fleet Reserve May order Fleet Reserve or FMCR to active duty in war or national emergency</p>	<p>10 USC 6485 Fleet Reserve In time of peace, may be ordered to two months' AD every four years</p>	<p>10 USC 6485 Fleet Reserve Any member of FR or FMCR may be required to serve 2 months AD in 4 years</p>	<p>10 USC 6485 Fleet Reserve In time of peace, FR or FMCR may be ordered to 2 months AD every 4 years</p>
<p>32 USC 502(f) National Guard Training/Other Duty Governor may call up Guardsmen with or without consent to perform additional training or "other duty"; requires request of</p>	<p>32 USC 502(f) National Guard Training/Other Duty Governor may call up Guardsmen with or without consent to perform additional training or "other duty"; requires request of</p>	<p>32 USC 502(f) National Guard Training/Other Duty Governor may call up Guardsmen with or without consent to perform additional training or "other duty"; requires request of</p>	<p>32 USC 502(a) National Guard Training 48 drills and at least 15 days training each year</p>

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POTUS or SECDEF to support "operations or missions"	POTUS or SECDEF to support "operations or missions"	POTUS or SECDEF to support "operations or missions"	
<u>32 USC 502(f)</u> <u>Homeland Defense Activities</u> <u>Governor upon request of POTUS or SECDEF may activate NG for up to 180 days, with one 90 day extension with SECDEF approval, to protect US and vital infrastructure critical to the national security</u>	<u>32 USC 502(f)</u> <u>Homeland Defense Activities</u> <u>Governor upon request of POTUS or SECDEF may activate NG for up to 180 days, with one 90 day extension with SECDEF approval, to protect US and vital infrastructure critical to the national security</u>	<u>32 USC 502(f)</u> <u>Homeland Defense Activities</u> <u>Governor upon request of POTUS or SECDEF may activate NG for up to 180 days, with one 90 day extension with SECDEF approval, to protect US and vital infrastructure critical to the national security</u>	<u>32 USC 502(f)</u> <u>National Guard Training/Other Duty</u> <u>Governor may call up Guardsmen with or without consent to perform additional training or "other duty"</u>

* Partial Mobilization (PM) allows for unfettered access to the IRR. Current DoD policy limitations constrain access to IRR. [REDACTED]

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APPENDIX I

RESERVE COMPONENT UTILIZATION AND AUTHORITIES

Source: DoDI 1215.06, pg 22

	Legal Authority	Purpose of Duty	Applies To	Type of Duty	
Training					
	10 USC 10147	Annual Training (AT)/Drill Requirement	Reserve Only	AD/IDT	Involuntary
	10 USC 12301(b)	Annual Training	Reserve & National Guard	AD	Involuntary
	10 USC 12301(d)	Additional/Other Training Duty	Reserve & National Guard	AD	Voluntary
	32 USC 502(a)	Annual Training (AT)/Drill Requirement	National Guard Only	FTNGD/IDT	Involuntary
	32 USC 502(f)(1)(A)	Additional Training Duty	National Guard Only	FTNGD	Involuntary
	32 USC 502(f)(1)(B)	Additional/Other Training Duty	National Guard Only	FTNGD	Voluntary
Support					
	10 USC 12301(d)	A GR Duty/Operational Support/Additional Duty	Reserve & National Guard	AD	Voluntary
	10 USC 12304b	Preplanned/Preprogrammed CCDR Support	Reserve & National Guard	AD	Involuntary
	32 USC 502(f)(1)(B)	A GR Duty/Operational Support/Additional Duty	National Guard Only	FTNGD	Voluntary
	32 USC 502(f)(1)(A)	Other Duty	National Guard Only	FTNGD	Involuntary
Mobilization					
	10 USC 12301(a)	Full Mobilization	Reserve & National Guard	AD	Involuntary
	10 USC 12302	Partial Mobilization	Reserve & National Guard	AD	Involuntary
	10 USC 12304	PRC	Reserve & National Guard	AD	Involuntary
	10 USC 12304a	Emergencies and Natural Disasters	Reserve Only	AD	Involuntary
	14 USC 712	Emergencies and Natural Disasters	USCGR Only	AD	Involuntary
Other					
	10 USC 12503	Funeral Honors	Reserve & National Guard	ID	Voluntary
	32 USC 115	Funeral Honors	National Guard Only	ID	Voluntary
	10 USC 12319	Muster Duty	Reserve & National Guard	ID	Involuntary
	10 USC 12301(h)	Medical Care	Reserve & National Guard	AD	Voluntary
	10 USC 12322	Medical Evaluation and Treatment	Reserve & National Guard	AD	Voluntary
	10 USC 12323	Pending LOD for Response to Sexual Assault	Reserve & National Guard	AD	Voluntary
	10 USC 688	Retiree Recall	Reserve & National Guard	AD	Involuntary
	10 USC 802(d)	Disciplinary	Reserve & National Guard	AD	Involuntary
	10 USC 10148	Unsat Participation (up to 45 days)	Reserve & National Guard	AD	Involuntary
	10 USC 12301(g)	Captive Status	Reserve & National Guard	AD	Involuntary
	10 USC 12303	Unsat Participation (up to 24 months)	Reserve & National Guard	AD	Involuntary
	10 USC 12402	Duty at National Guard Bureau	National Guard Only	AD	Voluntary
	10 USC 331	Insurrection	National Guard Only	AD	Involuntary
	10 USC 332	Insurrection	National Guard Only	AD	Involuntary
	10 USC 12406	Insurrection	National Guard Only	AD	Involuntary

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**APPENDIX J
ADDITIONAL ARMY NATIONAL GUARD TRAINING UNDER 32 U.S.C.
§ 502(f)(1)**

(UNCLASSIFIED)

INFORMATION PAPER

ARNG-SPZ
24 October 2017

SUBJECT: Additional ARNG Training performed under 32 U.S.C. § 502(f)(1)

1. Purpose: To discuss the policies and restrictions governing ARNG additional training performed under 32 U.S.C. § 502(f)(1)

2. Facts:

a. Training under 32 U.S.C. § 502(f)(1): Federal law authorizes 48 Inactive Duty Training (IDT) periods and 15 days of Annual Training (AT) for the NG pursuant to 32 U.S.C. § 502(a). Under the provisions of 32 U.S.C. § 502(f)(1), and IAW Service regulations, a member of the National Guard (NG) may, with or without his consent, be ordered to perform training in addition to that training as prescribed under 32 U.S.C. § 502(a). Pursuant to 32 U.S.C. § 502(f)(1)(A), if training is involuntary then it must be ordered with appropriate pay and allowances as provided by law.

b. AT and IDT Maximum Annual Limits: There is no statutory maximum annual limit on required training for members of the NG;¹ however, DoD policy limits NG AT to 30 days each FY.² CNGB has requested and obtained exceptions to this DoD policy from the USD(P&R). Per ARNG-G3, the last approved ETP expired on 30 September 2017. Subject to SECARMY approval, DoD regulation also allows for up to 36 Additional Training Periods (ATPs) apart from the total number of regularly scheduled IDT periods (48). The total number of regularly scheduled IDTs and ATPs that can be performed in a fiscal year equates to 84 periods or what would correspond to 42 days.³ IAW 10 U.S.C. § 115(i)(8), NG members performing Full-Time National Guard Duty for training (FTNGD-T) are not counted against the Active-Duty end strength.

c. Adjutant General Responsibilities: Training is the responsibility of the commander, and the relevant Adjutant General (TAG) is responsible for the training of his/her NG units and personnel while they are serving in a non-federalized duty status. Because NG perform their T32 training under the command and control of the relevant TAG, TAGs (or local commander) issue the order for NG SMs to perform additional training under 32 USC 502(f)(1).

d. NGB's Functions in support of Title 32 Training: NGB's functions as it relates to T32 NG training are specific to "prescribing training discipline and training requirements" or the "allocation of federal funds" in support of NG training. While the TAG is responsible for determining their respective State NG's training plan, NGB approves and can modify this plan IAW NGR 350-1. IAW NGR 350-1, NGB approves training

¹ DoDI 1215.06, Encl. 7, para. (2)(b)

² DoDI 1215.06, Encl. 7, para. (2)(b)

³ DoDI 1215.06, Encl. 7, para. (2)(a)(3)(b)(1)

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plans, which would include training performed as 32 USC 502(f) as described as FTNGD-TNG.⁴ Pursuant to CNGBI 0100.01 and NGR 350-1, the Director, ARNG (DARNG) performs NGB's functions as it relates to the ARNG, under the authority of, and at the direction of, CNGB.



⁴ Table 3-2, para. 3-16; Also, IAW ANG 36-2001, "the CNGB...issues the basic authority for members of the ANG to participate in training activities." (para. 2.3)

(UNCLASSIFIED)

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**APPENDIX K
SECURITY AND LAW ENFORCEMENT AUTHORITIES**

BULLET BACKGROUND PAPER

ON

SECURITY AND LAW ENFORCEMENT AUTHORITIES

Purpose: Identify legal authority for Title 10 military personnel, National Guard personnel in Title 32 status, National Guard personnel in state/territorial active duty status, and civilians to perform security, provide support to law enforcement, and perform law enforcement duties, during Defense Support to Civil Authorities (DSCA) operations.

BLUF: Title 10 military personnel may conduct DoD law enforcement activities and may secure DoD assets, personnel, classified information, and airfields (activities performed for a military purpose). Title 10 military personnel may carry weapons with SecDef approval or as specified in DoDD 5210.56. Guardsmen in Title 32 status may provide any support the supported state requests, if the activity supports mission-essential training. Guardsmen in state/territorial active duty (SAD) status may provide any assistance the state/territorial governor directs. Civilian law enforcement (LE) officers may perform security, support, and LE duties within the scope of their employment.

DISCUSSION:

TITLE 10 MILITARY

- 18 U.S.C. § 1385 (ref 8) generally prohibits using armed forces as posse comitatus or to execute laws
- 10 U.S.C. § 375 (ref 1) military members may not directly search, seize, arrest, interrogate, etc.
 - CJCS DSCA EXORD (ref 16) para 3.I.9, bans Title 10 DoD personnel engaged in DSCA from: search, seizure, arrest, apprehension, stop and frisk, surveillance, pursuit, interrogation, investigation, evidence collection, security functions, traffic or crowd control, or similar activities
- DoDD 3025.18 (ref 12) requires SecDef approval before any defense assistance to civilian LE organizations, especially with potentially lethal assets, or where a confrontation is reasonably likely between civilians and LE personnel (e.g., riots, hostage scenarios, barricaded suspects, sniper operations)
- DSCA EXORD (ref 16), para. 3.I.8. states, “military personnel are not authorized to carry individual service weapons unless authorized by SecDef or except as authorized by [DoDD 5210.56 (ref 11)].”
- DSCA EXORD (ref 16), para. 3.I.13.A. states, “weapons will not be carried during DSCA operations unless authorized by SecDef. The Combatant Commanders will establish and control arming levels if carrying of weapons has been authorized by SecDef. DoD personnel providing security for stored weapons and ammunition or classified material requiring armed security by separate DoD Directive, including [DoDD 5210.56 (ref 11)], may carry their weapons while performing their normal security duties.”
- Ref 19, para 3g(4), states that non-lethal weapons (NLW) may be used by qualified military personnel IAW CJCSI 3121.01B for force protection purposes, only when civilian law enforcement personnel are not available or are unable to control threats. If the situation permits, verbal commands and verbal warnings that NLW will be used, will be issued first. Afterwards, medical treatment must be offered and a flash report must be sent to the CDRUSNORTHCOM.

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- Commanders must comply with DoDD 5210.56 (ref 11), but generally *may* use Title 10 DoD military personnel in execution of a military purpose, meaning:
 - to conduct LE activities and investigations to enforce UCMJ or federal regulations within DoD (ref 13, Encl 3, para 1.b.(1));
 - to protect classified information and controlled unclassified information;
 - to protect DoD installations, facilities, personnel, equipment, and official guests;
 - to quell unexpected, large-scale civil disturbances, in an extraordinary emergency when prior authorization from POTUS is not possible (ref 13, Encl 3, para 1.b.(3));
 - under the Insurrection Act (ref 1);
 - to assist territorial governors with a civil disturbance (ref 13, Encl 3, para 1.b.(5)(l), *c.f.* ref 10)
 - to protect national parks and federal lands (ref 13, Encl 3, para 1.b.(5)(a)-(b)),
 - to protect against or assist in the case of crimes against foreign officials (refs 3 and 6), members of Congress, Justices of the Supreme Court, and certain senior Executive Branch officials (ref 4);
 - to assist the Attorney General in enforcing laws against crimes involving nuclear material (ref 5)
 - to protect the President, Vice President, and other dignitaries (ref 7); and
 - to remove unauthorized persons from Indian lands (ref 9).
- Title 10 DoD civilian personnel are only subject to the Posse Comitatus Act when under military command (DoDI 3025.21, Encl. 3, para. 2) (ref 13).

NATIONAL GUARD IN TITLE 32 STATUS

- The Posse Comitatus Act does not apply to members of the National Guard in a Title 32 training or operational support status. See DoDI 3025.21 (ref 13), para 2.f.(5).
- The Chief of the National Guard Bureau has approved a specified number of National Guard personnel may provide direct support through requests for assistance from affected States, in Title 32 training status under 10 U.S.C. 502(f)(1)(B), if the activity provides mission-essential training. Similar authorities may be provided in response to other natural disasters. (Ref 16)
- National Guard members in Title 32 status may provide any support the supported state requests and the supporting state permits.

NATIONAL GUARD IN ACTIVE STATE/TERRITORIAL STATUS

- Governor has power to summon posse comitatus or call out the militia (National Guard in SAD status) within the state/territory in the case of a disaster or to prevent or suppress lawless violence (refs 10 and 15)
- Governor may use his law enforcement personnel within the scope of their employment



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References:

1. 10 U.S.C. Chapter 15, "Insurrection"
2. 10 U.S.C. § 375, "Restriction on direct participation by military personnel"
3. 18 U.S.C. § 112, "Protection of foreign officials, official guests, and internationally protected persons"
4. 18 U.S.C. § 351, "Congressional, Cabinet, and Supreme Court assassination, kidnapping, and assault; penalties"
5. 18 U.S.C. § 831, "Prohibited transactions involving nuclear materials"
6. 18 U.S.C. § 1116, "Murder or manslaughter of foreign officials, official guests, or internationally protected persons"
7. 18 U.S.C. § 1751, "Presidential and Presidential staff assassination, kidnapping, and assault; penalties"
8. 18 U.S.C. § 1385, "Posse comitatus"
9. 25 U.S.C. § 180, "Settling on or surveying lands belonging to Indians by treaty"
10. 48 U.S.C. § 1591, "Governor and Lieutenant Governor; election; eligibility; official residence; powers and duties; report"
11. DoDD 5210.56, "Arming and the Use of Force"
12. DoDD 3025.18, "Defense Support of Civil Authorities"
13. DoDI 3025.21, "Defense Support of Civilian Law Enforcement Agencies"
14. SecDef Memo of 19 Sep 17, "DoD Support for Hurricane Maria Response Efforts"
15. Constitution of Puerto Rico
16. CJCS DSCA EXORD, dated 7 Jun 13
17. CNGB Memo, "Approval of Title 32 United States Code (U.S.C.) Section 502(f)(1)(B), Authority for Additional Training Support for Hurricane Maria Response," dated 19 Sep 2017
18. NORTHCOM OPOrd 01-17, dated 18 Jul 17, Annex C, Appendix 19

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APPENDIX L EMERGENCY SUPPORT FUNCTION #13 ACTIVATION FOR HURRICANE HARVEY (FEMA REGION VI)

Legal Authority Memo



U.S. Department of Justice
Bureau of Alcohol, Tobacco,
Firearms and Explosives
Washington, DC 20226
www.atf.gov

August 26, 2017

MEMORANDUM TO: Acting National Coordinator
Emergency Support Function #13

FROM: Megan McCarthy, ESF #13 Counsel

SUBJECT: ESF #13 Activation for Hurricane Harvey (FEMA Region VI)

The following memorandum outlines the law enforcement authority for Federal Law Enforcement Officers (FLEOs) of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), the United States Marshals Service (USMS), the Federal Bureau of Prisons (BoP), U.S. Immigration and Customs Enforcement (ICE), the U.S. Customs and Border Protection (CBP), the Department of Interior (DOI), Transportation Security Administration/Federal Air Marshal Service (TSA/FAMS), and the Department of Health and Human Services Office of Inspector General (HHS-OIG) who may be deployed as part of the ESF #13 activation in response to Hurricane Harvey. FLEOs utilized from responding agencies are "law enforcement officers" as defined at 5 U.S.C. §8401(17).

An ESF #13 activation may occur when the President makes a federal declaration pursuant to the Robert T. Stafford Disaster and Emergency Relief Assistance Act, as amended, 42 U.S.C. §5121 et. seq. (hereinafter, "Stafford Act"). Such a declaration authorizes implementation of either Title IV or V of the Stafford Act for disaster relief assistance and the potential activation of ESFs. Full or partial mobilization of federal assets and assistance may be triggered depending on the type of declaration (major disaster or emergency) and its scope (programs and designated areas). The declaration and subsequent mission assignment(s) set out the specific parameters for the Stafford Act assistance to be provided in response to the triggering event. For Hurricane Harvey, the President issued a major disaster declaration (DR-4332) covering the state of Texas, which authorizes assistance under Title IV of the Stafford Act.

The following FLEOs have federal arrest authority as follows:

- ATF FLEOs will rely on their organic federal arrest authority granted through Title 18, United States Code, Section 3051(a).
- DEA FLEOs will rely on their organic federal arrest authority granted through Title 21, United States Code, Section 878(a)(3).
- FBI FLEOs will rely on their organic federal arrest authority granted through Title 18, United States Code, Section 3052.
- USMS FLEOs will rely on their organic arrest authority granted through Title 18, United States Code, Section 3053 and Title 28, United States Code, Section 566(d).
- TSA/FAMS FLEOs will rely on their organic federal arrest authority granted through Title 49, United States Code, Section 114.

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- ICE and CBP FLEOs will rely on their organic federal arrest authority granted through Title 19, United States Code, Section 1589a. ICE and CBP will only provide FLEOs that have Title 19 authority delegated to them.

The authorities outlined above each provide the associated agency's designated FLEOs with full federal *arrest* authority. Specifically, these authorities provide that FLEOs may carry firearms, serve warrants and subpoenas issued under the authority of the United States, and make arrests without warrant for any offense against the United States committed in their presence, or for any felony cognizable under the laws of the United States if they have reasonable grounds to believe that the person to be arrested has committed or is committing such felony. An ESF #13 activation does not result in a requirement that responding agencies' FLEOs utilize investigative authorities.

BoP, DOI, and HHS-OIG FLEOs acting pursuant to an ESF #13 mission assignment will receive Special Deputation from the USMS, pursuant to authority granted through 28 U.S.C. §§ 566, 561, 509, 510; 28 C.F.R. §§ 0.111, 0.112, and 0.113. Importantly, such Special Deputations convey the authority to "make arrests without a warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony." 28 U.S.C. § 566(d). This allows deputized FLEOs to have the equivalent arrest authority as the other agencies identified above.

As always, when taking any enforcement actions, FLEOs are advised to follow all applicable orders and procedures of their respective Department/Component or the Department of Justice pursuant to their Special Deputation.¹ This includes following applicable Department/Component policies on intervention in exigent state offenses, based on peace officer or private citizen arrest authority.

For those FLEOs that may deploy under a potential Direct Federal Assistance (DFA) mission assignment, the following is provided regarding FLEOs' arrest authorities under Texas law. A summary of Louisiana law is also provided should a presidential declaration and subsequent mission assignment issue covering Louisiana.

Texas

Limited Peace Officer Authority:

Under Tex. Crim. Proc. Code Ann. § 2.122, FLEOs are not peace officers under Texas law. However, criminal investigators of select federal law enforcement agencies² are "special investigators" under Texas law with the powers of arrest, search, and seizure for felony offenses.

However, pursuant to Tex. Crim. Proc. Code Ann. § 14.01, private persons have the power to arrest, specifically, "[a] peace officer or *any other person*, may, without a warrant, arrest an offender when the offense is committed in his presence or within his view, if the offense is one classed as a felony or as an offense against the public peace."³

¹ The Department of Justice Deadly Force Policy, provides, in part, that "[l]aw enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person." See POLICY STATEMENT USE OF DEADLY FORCE, Approved by the Attorney General July 1, 2004.

² Of the agencies participating in this activation, the following are agencies' FLEOs "special investigators" under Texas law: FBI, ICE, ATF, DEA, and USMS. CBP FLEOs and National Park Service (NPS) FLEOs of DOI have much more limited authorities under Texas law. See subparagraphs (c) and (d) of Tex. Crim. Proc. Code Ann. § 2.122. DOI (excluding NPS), TSA/FAMS, BoP, and HHS-OIG FLEOs are not "special investigators" under Texas law.

³ In determining whether particular situations involves a breach of the peace, the Texas Court of Criminal Appeals in *Miles v. State* concluded "that a citizen may make a warrantless arrest of a person who commits a misdemeanor within the citizen's presence or view if the evidence shows that the person's conduct poses a threat of continuing violence or harm to himself or the public. It is the

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Deputation Authority:

Sheriffs have authority to appoint reserve deputies, which have the same rights, privileges, and duties as peace officers. See Tex. Loc. Gov't Code Ann. § 85.004.

Louisiana

No Peace Officer Authority:

Louisiana does not confer peace officer authority on any FLEO by statute. There is, however, private citizen arrest authority under La. Code Crim. Proc. Ann. art. 214 – “[a] private person may make an arrest when the person arrested has committed a felony, whether in or out of his presence.” The private person must then “immediately turn the prisoner and all effects removed from him over to a peace officer.” La. Code Crim. Proc. Ann. art. 226.

Deputation Authority:

There are several authorities Louisiana can utilize to grant FLEOs peace officer authority. They are as follows:

Under La. Stat. Ann. § 40:1379.1, the superintendent of state police can issue special officer commissions. Special officers have same powers and duties as peace officers.⁴ To get a special officer commission, there must be a need for statewide police power and power to arrest.

In addition, La. Stat. Ann. § 14:329.6 provides that during any proclaimed state emergencies, the proclaiming officer can appoint peace officers during the emergency.

Finally, La. Stat. Ann. § 13:5537 provides that the sheriff of each parish has the authority to appoint and commission special deputies to assist him/her in law enforcement during emergencies. In this situation, a policy jury has to declare the emergency after the sheriff has declared to the police jury in writing the need for assistance of special officers to cope with any situation in the parish in the interest of proper law enforcement. Special deputies when duly appointed and qualified under this section have same power and duties of paid deputies (i.e. may arrest offenders for any law violations), with the sheriff being responsible for their official acts. See Op.Atty.Gen.1946-48, p. 987.

Conclusion

FLEOs performing law enforcement duties in accordance with this memorandum and the attached Mission Assignment/Briefing Package are acting within the scope of their employment. Acting outside the scope of the authority outlined in this memorandum, or pursuant to private citizen arrest authority, may expose the FLEO to personal civil liability.

exigency of the situation, not the title of the offense, that gives both officer and citizen statutory authorization to protect the public from an ongoing threat of violence, harm, or danger by making a warrantless arrest.”

⁴ Under La. Code Crim. Proc. Ann. art. 213(A), “[a] peace officer may, without a warrant, arrest a person when any of the following occur: (1) The person to be arrested has committed an offense in his presence; and if the arrest is for a misdemeanor, it must be made immediately or on close pursuit. (2) The person to be arrested has committed a felony, although not in the presence of the officer. (3) The peace officer has reasonable cause to believe that the person to be arrested has committed an offense, although not in the presence of the officer. (4) The peace officer has received positive and reliable information that another peace officer from this state holds an arrest warrant, or a peace officer of another state or the United States holds an arrest warrant for a felony offense.”

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APPENDIX M

BULLET BACKGROUND PAPER

ON

CAP DOMESTIC¹ IMAGERY

PURPOSE

This BBP summarizes the legal limitations on Civil Air Patrol (CAP) domestic imagery

BACKGROUND

The legal restrictions on CAP imagery depend on the answers to the following questions:

- What is the mission?
- Who requested the support? Is the task a Federal mission?
- Why are the images being collected (e.g., search and rescue, support to law enforcement)?
- Who is selecting the items or areas to be imaged (e.g., DoD, CBP, FEMA)?
- Who is planning the mission?
- How is targeting info provided to the operator (e.g., DoD ATO, on-board CBP member)?
- What assets will be used to produce the images (e.g., cameras, aircraft)?
- Who is operating the sensors?
- What assets will be used to transmit the images (e.g., commercial wireless, DoD Satellites, World Wide Web, DoD networks)?
- What assets will be used to process and/or analyze the images (e.g., intelligence personnel, DoD non-intelligence personnel, non-DoD civilians only)?
- What is the quality of the image (e.g., can you identify individuals)?
- Where will the images be stored (e.g., will they ever be on a DoD system or intel system)?
- Who will have access to the images (e.g., DoD, Federal gov't, local gov't, general public)?

Although some laws and regulations do not apply to CAP per se,² they do apply to missions performed by CAP in its role as a civilian auxiliary of the Air Force.³

- CAP is a volunteer civilian auxiliary of the Air Force when its services are used by any department or agency in any branch of the Federal Government.⁴ As a result, when acting as part of an Air Force assigned or authorized mission (AFAM), CAP may only provide support if such support could legally be provided by the Air Force.
- As a congressionally chartered corporation,⁵ CAP may enter into agreements to provide services to state and local governments or other non-Federal entities without being tasked by the Air Force.⁶ The CAP Corporation may do so even where the Air Force would lack statutory authority to provide services to those entities.

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Key Definitions

- The term “Collection” means received by an employee in the course of his official duties with the intent to use the information in any manner. For intelligence oversight purposes, the term “Collection” means received for use by an employee *of a DoD intelligence component* in the course of his official duties.⁷
- The term “United States person” means: (1) A United States citizen; (2) An alien known by the DoD intelligence component concerned to be a permanent resident alien; (3) An unincorporated association substantially composed of United States citizens or permanent resident aliens; (4) A corporation incorporated in the United States, except for a corporation directed and controlled by a foreign government or governments.⁸
 - There are significant limitations on the ability to retain and disseminate United States Person (USPERS) information, even if lawfully obtained.⁹

DISCUSSION

Because CAP is not an intelligence organization, has no assigned intelligence mission, and is prohibited from engaging in intelligence activities,¹⁰ it is not subject to intelligence oversight restrictions. However, it is subject to the limitations on acquisition of information concerning persons and organizations not affiliated with DoD.¹¹

- DoD policy prohibits collecting, reporting, processing, or storing information (including “open source” information) on individuals or organizations not affiliated with DoD, except in those limited circumstances where such information is essential to one of three missions: Protection of DoD functions and property; DoD personnel security investigations; or SecDef directed civil disturbance missions.¹²
 - Access to information obtained under the exceptions to the prohibition is restricted to *Governmental Agencies* that require such information in the execution of their duties.¹³
 - The prohibitions above do not apply to missions where the activity does not involve any acquisition of information concerning the activities of individuals or organizations not affiliated with DoD (e.g., damage assessment, route surveys, broad area images, airlift) or where there is actual or implied (e.g., search and rescue) consent.¹⁴
 - Under these circumstances, so long as no intelligence assets are involved (see below), CAP missions such as situational awareness, damage assessment, evacuation monitoring, and light airlift may be approved by the 1st AF/CC (and 11th and 13th in their AORs).¹⁵ SecDef approval or CJCS and SecDef notification are not required¹⁶.
 - These missions may not directly support (e.g., search, seizure, surveillance, arrest, detention, evidence collection) civilian law enforcement. However, information obtained incidental to an otherwise authorized and approved AFAM that may indicate involvement of individuals in activities that may violate federal, state,

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local, or foreign laws may be disseminated to law enforcement agencies having jurisdictional responsibility for investigating and enforcing that criminal law.¹⁷

- Information obtained under these exceptions, regardless of when acquired, **shall be destroyed within 90 days** unless its retention is required by law or unless its retention is specifically authorized under criteria established by the SecDef, or his designee.¹⁸

While SecDef approval or CJCS and SecDef notification are not required for employment of AF AUX forces¹⁹, approval is required to utilize DoD intelligence component capabilities to support the mission. The use of any intelligence asset (e.g., camera, comm device, computer system)²⁰ or member (assigned, attached, or detailed to an intelligence organization)²¹ in the process (e.g., selection, collection, transmission, reception, processing, analysis, storage, dissemination)²², subjects the resulting products to intelligence oversight restrictions.

- Information may be collected about a US Person by a DoD intelligence component only if it is necessary to perform a function assigned to the intelligence component and it falls into one of the 13 specified categories.²³

- Not even “open source” information (e.g., newspaper articles, internet data) may be collected unless it is pursuant to an assigned function.²⁴

- The **only** intelligence activities that DoD intelligence capabilities are authorized to conduct are Foreign Intelligence (FI) or Counter Intelligence (CI).²⁵

- DoD intelligence capabilities may only be used for other purposes (non FI or CI) when both the mission and the specific use are approved by SecDef.²⁶

- SecDef approval of mission is generally obtained in the EXORD, through the RFF Process or via a Personal For (P4) memorandum.

- SecDef approval of the specific use is generally obtained through the drafting and approval of the Proper Use Memorandum (PUM) or Proper Use Statement (PUS). For CAP, a PUM is not required but a similar legal review must be accomplished.

- The use of DoD intelligence capabilities for planning, tasking, analysis, and production in support of DSCA missions, such as Incident Awareness and Assessment (IAA) is a use of DoD intelligence component capabilities for non-intelligence activities.²⁷

- When specifically approved by SecDef, DoD intelligence capabilities, to include assets, including overhead and aerial reconnaissance, as well as special technical collection techniques, may be used for damage assessment and trafficability of waterways²⁸; search and rescue (SAR)²⁹; and support of force protection activities not otherwise prohibited by law (e.g., the *Posse Comitatus Act*)³⁰

The AF may utilize CAP to support law enforcement agencies IAW applicable laws and regulations, including AFI 10-801, *Assistance to Civilian Law Enforcement Agencies*, DoDD

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5525.5, *Cooperation with Civilian Law Enforcement Officials, Posse Comitatus Act* (18 USC 1385), and Chapter 18 of Title 10 (*Military Support for Civilian Law Enforcement Agencies*).³¹

- AFAMs may include limited counter-drug missions as authorized by Section 1004 of the Fiscal Year (FY) 1991 National Defense Authorization Act as amended and restated in FY 2002.³²
- CAP will not participate in the interdiction of vehicles, vessels, or aircraft or in a search, seizure, arrest, apprehension, surveillance, pursuit, or similar activity.³³

SUMMARY

Although some laws and regulations do not apply to CAP per se,³⁴ they do apply to missions performed by CAP in its role as a civilian auxiliary of the Air Force.³⁵ While CAP is generally not subject to intelligence oversight restrictions, the nature of the mission, equipment, or other involved parties may result in the application of those limitations and approval mechanisms. In addition, even when CAP missions are conducted independent of any intelligence capabilities, they are still subject to the limitations on acquisition of information concerning persons and organizations not affiliated with the DoD and the *Posse Comitatus Act*. A fact specific legal review should be conducted for all CAP missions and, if intelligence capabilities are utilized, appropriate approvals must be obtained (e.g., SecDef P4 and PUM).

¹ IAW paragraph 2.2 of AFI 10-2701, CAP will not execute AFAMs outside the United States and the Commonwealth of Puerto Rico unless specifically authorized.

² IAW 10 USC 9441, the Civil Air Patrol is a nonprofit corporation that is federally chartered under 36 USC 40301. Except as provided in 10 USC 9442 (b)(2), the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose.

³ IAW 10 USC 9442 (b)(2), the Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force. *See also*, para 1.2 of AFI 10-2701. This remains true for state requests filtered through a Federal Agency (e.g., where Louisiana requests assistance through FEMA).

⁴ *See*, 10 USC 9442(a).

⁵ *See*, 32 USC 40301.

⁶ *See*, 32 USC 40304-40305. *See also* paragraphs 1.1.1 and 2.3 of AFI 10-2701.

⁷ *See*, paragraph C2.2.1 of DoD 5240.1-R. "Information shall be considered as "collected" only when it has been received for use by an employee of a DoD intelligence component in the course of his official duties. Thus, information volunteered to a DoD intelligence component by a cooperating source would be "collected" under this procedure when an employee of such component officially accepts, in some manner, such information for use within that component. Data acquired by electronic means is "collected" only when it has been processed into intelligible form [not bits and bytes].

⁸ *See*, paragraph DL 1.1.25 of DoD 5240.1-R.

⁹ *See*, DoDD 5240.1, DoD 5240.1-R, and DoDD 5200.27. *See also*, paragraphs 9.L.2 and 9.L.2A of CJCS DSCA EXORD 141745Z AUG 09. *See also*, Attachment 3 to N-NCI 14-103.

¹⁰ *See*, paragraph 2.8.2 of AFI 10-2701.

¹¹ *See*, DoDD 5200.27, *Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense*.

¹² *See*, paragraphs 3.1, 4, and 5 of DoDD 5200.27.

¹³ *See*, paragraph 6.3 of DoDD 5200.27.

¹⁴ *See* paragraphs 3.1, 6.1, and 6.2.2 of DoDD 5200.27. One of the 13 categories for DoD Intel component collection under DoD 5240.1-R, Procedure 2 is consent, but there is no equivalent provision in DoDD 5200.27 for

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non-Intel component collection. DoDD 5200.27 paragraph 4.1.5, read in conjunction with the previously cited sections, the DSCA EXORD, and the AF responsibility for inland SAR also support this position.

¹⁵ See, paragraph 1.G of CJCS DSCA EXORD 141745Z AUG 09.

¹⁶ See, paragraph 1.G of CJCS DSCA EXORD 141745Z AUG 09.

¹⁷ See, *Posse Comitatus Act* (18 USC 1385) and paragraph 2.3(i) of EO 12333. See also, paragraphs 9.L.1 and 9.L.2 of CJCS DSCA EXORD 141745Z AUG 09. See also, paragraph 6.1 of DoDD 5200.27

¹⁸ See, paragraph 6.4 of DoDD 5200.27. See also, paragraph 9.L.2 of CJCS DSCA EXORD 141745Z AUG 09.

¹⁹ See, paragraph 1.G of CJCS DSCA EXORD 141745Z AUG 09.

²⁰ See, Definition of DoD intelligence component capabilities in N-NCI 14-103.

²¹ See, paragraph DL 1.1.10 of DoD 5240.1-R.

²² See, paragraph 2.6 of N-NCI 14-103.

²³ See, Procedure 2 of DoD 5240.1-R. For purposes of collection of information about US persons pursuant to DoD 5240.1-R, Procedure 2, this requires that the function be both an authorized intelligence activity (foreign intelligence or counterintelligence) and a mission delegated to that specific DoD intelligence component.

²⁴ See, paragraph 2.3.2 of DoD 5240.1-R.

²⁵ See, Executive Order 12333, United States Intelligence Activities, dated 4 Dec 81 (as amended by E.O. 13284 dated 23 Jan 03, and E.O. 13355 dated 27 Aug 04), paragraph E2.7 of DoDD 5240.01, and paragraphs 2.1, 2.5, and 2.6 of N-NCI 14-103.

²⁶ See, 10 USC 113(d) and DoD 5240.1-R.

²⁷ See, paragraph 4.D.7 of CJCS DSCA EXORD 141745Z AUG 09 and paragraph 2.6 of N-NCI 14-103.

²⁸ Because it is not directed at US Persons, this use is consistent with paragraph 2.3(h) of EO 12333.

²⁹ Because it is intended to protect the safety of persons, this use is consistent with paragraph 2.3(d) of EO 12333.

³⁰ This force protection use is limited to protecting Title 10 forces and, IAW the *Posse Comitatus Act* (18 USC 1385), may not be used in direct support (e.g., search, seizure, surveillance, detention, arrest) of civilian law enforcement. However, information obtained incidental to an otherwise authorized and approved use of DoD intelligence capabilities that may indicate involvement of US persons in activities that may violate federal, state, local, or foreign laws may be disseminated to those law enforcement agencies having jurisdictional responsibility for investigating and enforcing that criminal law. See, paragraph 2.3(i) of EO 12333.

³¹ See, laws and regulations cited in the text and paragraph 1.1.1 and 2.2.3 of AFI 10-2701.

³² See, law cited in the text paragraph 2.2.3.1 of AFI 10-2701.

³³ See, *Posse Comitatus Act* (18 USC 1385) and paragraph 2.2.3.2 of AFI 10-2701.

³⁴ IAW 10 USC 9441, the Civil Air Patrol is a nonprofit corporation that is federally chartered under 36 USC 40301. Except as provided in 10 USC 9442 (b)(2), the Civil Air Patrol is not an instrumentality of the Federal Government for any purpose.

³⁵ IAW 10 USC 9442 (b)(2), the Civil Air Patrol shall be deemed to be an instrumentality of the United States with respect to any act or omission of the Civil Air Patrol, including any member of the Civil Air Patrol, in carrying out a mission assigned by the Secretary of the Air Force. See also, para 1.2 of AFI 10-2701. This remains true for state requests filtered through a Federal Agency (e.g., where Louisiana requests assistance through FEMA).

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ANNEX N

BULLET BACKGROUND PAPER

ON

TRANSPORTATION OF CHARITABLE HURRICANE RELIEF DONATIONS

Purpose: Identify legal authority to transport disaster relief supplies donated by private citizens to:
1) Puerto Rico and the U.S. Virgin Islands for hurricane relief; 2) foreign Caribbean islands for hurricane relief; and 3) Mexico for earthquake relief.

BLUF: DoD may transport privately donated disaster relief supplies to aid in Hurricane Maria recovery efforts for Puerto Rico if coordinated with FEMA. DoD may transport donated relief supplies to a foreign country in response to a request from that country, communicated through the State Department.

DISCUSSION:

U.S. STATES AND TERRITORIES

- Stafford Act (ref. 7) permits federal agencies to support relief of POTUS-declared major disaster
 - In major disasters, agency resources may be used to:
 - Coordinate disaster relief assistance provided by private organizations (10 U.S.C. § 5170a) and
 - Distribute supplies through relief and disaster assistance organizations (10 U.S.C. § 5170b)
 - POTUS has declared Hurricane Maria a major disaster for Puerto Rico & U.S. Virgin Islands (FEMA-4339-DR, dated 20 Sep 17 & FEMA-4340-DR, dated 20 Sep 17)
 - FEMA is primary USG agency to coordinate disaster response efforts
 - SecDef (delegated to DepSecDef or the DoD ExecSec) is the approval authority for transportation in support of U.S. disaster relief and humanitarian assistance activities and transportation to support responses to civil emergencies (ref. 11, Table 4, Item 1, pg. 59)
 - SecDef directed DoD to support Hurricane Maria response only IAW reimbursable FEMA mission assignment (ref. 12)
 - FEMA has given DoD multiple reimbursable mission assignments including cargo transportation to Puerto Rico (refs. 16-18)
 - Under the Economy Act (ref. 6), DoD may transport the personnel or property of another federal agency if the other agency reimburses DoD and it would be more efficient to do so. The other agency must have the authority to transport the personnel or property.
 - Donated or loaned vehicles and equipment presenting air transportability problems must be approved by Air Transportability Test Loading Activity (ATTLA) before movement (ref. 14)
- BL: If FEMA requests DoD to transport charitable donations under a mission assignment, DoD should do so. If individuals or private organizations request DoD to move donated supplies or equipment, consult FEMA to see whether doing so is permissible under an existing MA.

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FOREIGN COUNTRIES

- SecDef may transport donated supplies, without charge, to any country on a space-available basis (10 U.S.C. § 402), provided the supported combatant commander has made the following determinations IAW DTR (ref. 13)
 - Transport of such supplies is consistent w/U.S. foreign policy;
 - Supplies are suitable for humanitarian purposes and in usable condition;
 - There's a legitimate humanitarian need for such supplies by their intended recipient(s);
 - Supplies will be used for humanitarian purposes; and
 - Adequate arrangements have been made to distribute or use such supplies in destination country
- POTUS may direct SecDef to provide disaster assistance including transportation, supplies, services, and equipment to foreign country (10 U.S.C. § 404)
 - Transportation of aid funded by Overseas Humanitarian, Disaster, & Civic Aid (OHDACA) Appropriation, as well as donations of excess DoD property, is permitted by 10 U.S.C. § 2561
- SecDef (DepSecDef or the DoD ExecSec) is the approval authority for transportation in support of foreign disaster relief and humanitarian assistance activities (ref. 11, Table 4, Item 1, pg. 59)¹
- Process Foreign gov't requests for aid via diplomatic note to State Dep't
 - Ambassador determines disaster is beyond partner nation (PN)'s capacity to respond, PN has requested or will accept U.S. offer of assistance, and disaster declaration is in USG's interest
- USAID is lead USG agency for disaster relief in foreign country; may request DoD help via RFA
 - DoD ExecSec reviews USAID Office of Foreign Disaster Assistance (OFDA) request & submits to OSD for SecDef approval
 - JS coordinates DoD support
 - USNORTHCOM deploys forces in support of OFDA to provide requested capabilities to PN
 - OFDA assistance may include air/sea delivery of commodities, water, shelter

¹ But see ref. 10, Table 4, Items 25 (authorizing CDRs to authorize transportation of humanitarian relief supplies meeting the requirements of 10 U.S.C. 402 and transported on allocated CCMD aircraft) and 31 (authorizing USTRANSCOM/CC or designee to authorize transportation of humanitarian relief supplies meeting the requirements of 10 U.S.C. § 402 on USTRANSCOM aircraft).

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References:

1. 10 U.S.C. § 402, "Transportation of humanitarian relief supplies to foreign countries"
2. 10 U.S.C. § 404, "Foreign disaster assistance"
3. 10 U.S.C. § 2557, "Excess nonlethal supplies: availability for humanitarian relief, domestic emergency assistance, and homeless veterans assistance"
4. 10 U.S.C. § 2561, "Humanitarian assistance"
5. 10 U.S.C. § 9444, "Civil Air Patrol"
6. 31 U.S.C. § 1535, "Economy Act"
7. 42 U.S.C. §§ 5121-5207 "Robert T. Stafford Disaster Relief and Emergency Assistance Act"
8. Executive Order 12966, "Foreign Disaster Assistance"
9. 44 C.F.R. Part 206, "Federal Disaster Assistance"
10. DoDD 3025.18, "Defense Support to Civil Authorities"
11. DoDI 4515.13, "Air Transportation Eligibility"
12. SecDef Memo of 19 Sep 17, "DoD Support for Hurricane Maria Response Efforts"
13. Defense Transportation Regulation 4500.9-R, Part III, Appendix G
14. Defense Transportation Regulation 4500.9-R, Part III, Appendix O
15. FEMA Policy FP 104-010-2, "Mission Assignment Policy"
16. FEMA Mission Assignment 3391EM-PR-DOD-02, "Puerto Rico Incident-Hurricane Maria"
17. FEMA Mission Assignment PR-17091710-DOD-03, "Puerto Rico Incident-Hurricane Maria"
18. FEMA Mission Assignment PR-17091701-DOD-04, "Puerto Rico Incident-Hurricane Maria"

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**APPENDIX O
DISTRICT OF COLUMBIA NATIONAL GUARD**

Note: This paper was modified from the material submitted by Mr. Robert Gonzales from the Office of the Staff Judge Advocate, ARNORTH.

References.

- a. Title 10 United States Code §§ 331-335, Insurrection Act
- b. Title 10 United States Code §§ 12301-12304, Reserve Component
- c. Title 10 United States Code § 12406, National Guard in Federal Service
- d. Title 18 United States Code § 1385, Use of Army and Air Force as Posse Comitatus
- e. Title 32 United States Code § 502(d)(3), Required Drills and Field Exercises
- f. District of Columbia Code Title 5 § 5-129.03
- g. District of Columbia Code Title 7 § 7-2331
- h. District of Columbia Code Title 49 §§ 49-301, 49-304, 49-404, 49-409
- i. Executive Order (E.O.) 11485, dated 1 October 1969
- j. Secretary of Defense Memorandum, Subject: Supervision and Control of the National Guard of the District of Columbia, dated 10 October 1969
- k. B-176491 July 17, 1972, 52 Comptroller General 35
- l. NORAD/NORTHCOM Instruction 10-127, Support to Dual-Status Commander Led Joint Task Force, 13 October 2015
- m. National Guard Domestic Operations Manual, 20 May 2008

History and Mission. In 1802, the Congress of the United States enacted legislation officially establishing the District of Columbia (D.C.) Militia, which today is known as the D.C. National Guard (DCNG). The mission of the DCNG is to protect life, property, and the interests of the District of Columbia during civil emergencies; to provide ceremonial support on national occasions (e.g., State funerals, inaugurations, and parades); and, when Federalized, to serve as an integral component of the Nation's military forces. The DC Army National Guard is composed of the 74th Troop Command, the 260th Regiment Regional Training Institute (Officer Candidate School), the 1-224th Aviation Security and Support Battalion, the 1-126th General Support Aviation Battalion, the 257th Army Band, the Mobilization Augmentation Command (MAC), District of Columbia Medical Command, Detachment 4 Operational Support Airlift Command, and the Recruiting and Retention Battalion. The 33rd Weapons of Mass Destruction Civil Support Team, a joint Army and Air unit, is able to deploy rapidly to any incident in the District of Columbia, or local area, and assist local first-responders in determining the nature of an attack, provide medical and technical advice, and pave the way for the identification and arrival of follow-on State and Federal military response assets.

The Air National Guard, 113th Wing's primary mission is training of air combat and operational airlift crews for national defense. Because the District of Columbia lacks an installation with a runway, all of the DC Air Guard units, except for those elements supporting JFHQ, are located at Andrews Air Force Base, MD, the home of DC Air Guard units since 1946.

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Specifically, the 113th Wing provides a 24/7 ready response force of F-16 fighters for the defense of the National Capital Region through its Air Sovereignty Alert mission. The unit was not designated as an Air Sovereignty Alert force for the NCR until September 11, 2001. On that day, the 113th Wing fighters were among the first to be overhead the Nation's Capital, and have been since. The wing's 201st Airlift Squadron, also based at Andrews AFB, has a unique mission within the Air National Guard. With its C-38 Astra and C-40 Boeing 737 aircraft, the unit's mission is to fly members of Congress, high-ranking civilian leaders and Defense Department officials around the globe. Members of Congress frequently fly with the 201st as do other leaders in Washington. Other DCANG units include the 121st Fighter Squadron and the 231st Combat Communications Squadron.

Command and Control. In accordance with (IAW) D.C. Code Title 49 § 49-409 passed by Congress, the President of the United States is at all times the Commander-in-Chief of the DCNG. Executive Order (E.O.) 11485, dated 1 October 1969, delegated presidential authority to command, supervise, administer, and control the DCNG to the Secretary of Defense (SecDef). By Reference j, the SecDef further delegated this authority, as it pertains to the D.C. Army National Guard (DCARNG) to the Secretary of the Army, and as it pertains to the D.C. Air National Guard (DCANG) to the Secretary of the Air Force. Both Secretaries may, but have not, further delegated this authority to their respective Assistant Secretary for Manpower and Reserve Affairs. As an exception to this delegation of authority, whenever any part of the DCNG, be it the DCARNG or DCANG, is used to support civil authorities, the Secretary of the Army commands and controls the DCNG.

Commanding General. In accordance with E.O. 11485 and D.C. Code Title 49 § 49-301, command of DCNG military operations is exercised through the Commanding General of the DCNG rather than through an Adjutant General as is the practice in all of the States and Territories. 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 to so serve.

Adjutant General. In accordance with D.C. Code Title 49 §§ 49-304, an Adjutant General may also be assigned by the President. The Adjutant General is subordinate to and subject to the orders of the Commanding General.

Requests for Civil Support. The Mayor of the District of Columbia has no formal command authority over the DCNG. D.C. Code Title 49 § 103, provides that the Mayor, or the United States Marshal for the District of Columbia, or the National Capital Service Director, may request the President for assistance. As a matter of practice, though, whenever any of these three officials desires civil support from the DCNG, a request is submitted to the Commanding General of the DCNG, who notifies the Secretary of the Army. Pursuant to E.O. 11485, the law enforcement policies to be used by DCNG military forces when aiding the civil authorities of the District are established after consultation between the Department of Defense and the Attorney General. The following seven steps set forth the process employed in considering a request by civil authority for assistance (although simplified into seven steps, this process involves coordination with numerous intra-Pentagon offices and the Department of Justice):

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Step 1. The Mayor, or United States Marshal for the District of Columbia, or the National Capital Service Director, determines there exists a potential requirement for DCNG support or an emergency requiring support and submits a written request for such to the Commanding General, DCNG;

Step 2. The Commanding General, DCNG, notifies the Secretary of the Army of the request and advises the Secretary as to whether the DCNG is capable of providing all or part of the support requested and whether such support is appropriate;

Step 3. The Secretary of the Army consults with his Army General Counsel and the Attorney General on the extent of support to be rendered;

Step 4. The Attorney General advises the Secretary of the Army on alternatives;

Step 5. The Attorney General and the Secretary of the Army establish mission parameters and the law enforcement policies to be employed by the DCNG in providing support;

Step 6. The Secretary of the Army makes the mission decision; and,

Step 7. The Commanding General, DCNG, advises the District's civil authorities of Secretary of the Army's decision.

In his advice to the SecDef and the Secretary of the Army regarding employment of the DCNG in support of civil authority, the Attorney General routinely refers to D.C. Code Title 49 § 49-404, as authority for the DCNG to aid civil authority in its status as a subset of the enrolled militia as defined by the D.C. Code.

Duty Status. The DCNG performs all missions in either a Title 10 or Title 32 status.

Title 49 of the D.C. Code. Title 49 implements the District of Columbia Militia Act of 1889. It authorizes the three officials identified above to request the President to order out the militia to aid the civil authorities in suppressing a public disturbance. When the DCNG is mobilized under these circumstances it acts in a "militia status" on behalf of the District. Although this Title 49 duty status is similar to State Active Duty (SAD) status, it has never been used because the Congress, until recently, has never provided funds in the D.C. budget to pay DCNG personnel serving in this status. Although the D.C. Act 16-389 (June 2, 2006), "Fiscal Year 2007 Budget Request Act" provided funds, the current D.C. Code is functionally obsolete in that it does not provide a mechanism to pay DCNG personnel for duty, or to reimburse expenses, or to provide any coverage for injury, death, or disability while in a Title 49 duty status.

Title 32 of the U.S. Code. Historically, the DCNG has always provided civil support to the District in a Title 32 training status. The Secretary of the Army has broad authority to determine what constitutes appropriate "training" for credit and compensation under Title 32 U.S.C. § 502(d)(3). In his role of rendering decisions on questions involving the use of, and accountability for, public funds, the Comptroller General has previously opined in 52 Comp Gen 35 (1972) that in view of the Secretary's broad discretion in this regard, there would be no objection should the Secretary consider as annual training under Title 32, a State's use of the National Guard for disaster relief. The Comptroller General's opinion suggests, however, that the Secretary must first determine that the duty in question constitutes proper and adequate

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training for the units involved. These same criteria may be applied in assessing whether the duties to be performed by members of the DCNG in support of the civil authority constitutes proper and adequate training, such that the execution of such duties in a Title 32 status and the payment of participating guardsmen from Title 32 appropriated funds, is appropriate. The fact that the DCNG's performance of such a "training" mission produces a collateral "operational" benefit does not, in itself, render the mission objectionable.

Title 5 of the D.C. Code. Whenever service in a Title 32 status in support of the District civil authority may involve the exercise of law enforcement-like functions, the Secretary of the Army and the Attorney General consent to the providing of such support is subject to the Mayor's designation of members of the DCNG as "special privates" pursuant to D.C. Code Title 5 § 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. When performing such duties, DCNG personnel wear an emblem authorized by the Mayor, which is a special brassard. Title 32 orders issued to DCNG personnel include authority to act under the provisions of Title 5 of the D.C. Code. Although they have "special private" status, DCNG Guardsmen remain under the command and control of their superior military officers at all times. However, with a view towards maximizing unity of effort, the Commanding General of the DCNG and the Chief of the District of Columbia Metropolitan Police Department coordinate their respective command structures and personnel.

Title 10 of the U.S. Code. Pursuant to Title 10 U.S.C. § 12302, 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, pursuant to Title 10 U.S.C. § 12406, the President may call the Army and Air National Guard into active Federal service whenever there is a rebellion or danger of a rebellion against the authority of the Government of the United States or whenever the President is unable, with the regular forces, to execute the laws of the United States. The President may also call the National Guard into active Federal service pursuant to the Insurrection Statutes, Title 10 U.S.C. §§ 331-335. The Insurrection Act was employed to order the DCNG into active Federal service to complement Federal troops deployed to quell the disorder associated with the rioting in the District that ensued after the death of Dr. Martin Luther King in April 1968.

Posse Comitatus Act (PCA) Application. Although the chain-of-command of the DCNG, whether operating in a Title 10 or Title 32 status, always runs through the Department of Defense to the President, the applicability of the proscriptions of the PCA, depends on the status of each individual DCNG service member and his chain-of-command within the DCNG. If the service member and his DCNG chain of command are serving in a Title 10 status, they are considered part of the "Army or Air Force" for PCA purposes and are subject to the PCA's prohibition on participation in the enforcement of civil laws. On the other hand, if the service member and his DCNG chain of command are in a Title 32 status, they are not considered part of the "Army or Air Force" and thus are not subject to PCA restrictions.

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Intelligence Oversight Application. Whether in a Title 10 or Title 32 status, all members of the DCNG must comply with all Department of Defense and National Guard policies pertaining to the collection and transmission of information on U.S. persons and with all other Federal intelligence oversight provisions.

Emergency Management Assistance Compact (EMAC). The District of Columbia enacted EMAC legislation in the Omnibus Anti-Terrorism Act of 2002, effective October 17, 2002, D.C. Law 14-194, D.C. Code §§ 7-2331 et seq. (2005 Supp.). The Mayor triggers the EMAC by declaring an emergency in the District. However, the EMAC does not authorize the Mayor to call out or activate the DCNG. Normally, all State National Guard assistance under EMAC is provided in a SAD status, unless the SecDef approves Title 32 status. Because the DCNG does not have a working SAD or equivalent status, whenever it leaves the District to perform a mission under EMAC, it must do so in a Title 32 status, with a view towards performing training that comports with the service member's Military Occupational Specialty (MOS) or Air Force Specialty Code (AFSC), and subject to the prior approval of the Secretary of the Army. Furthermore, DCNG support pursuant to EMAC has traditionally been provided pursuant to a Memorandum of Understanding (MOU) with the supported States. Currently, DCNG maintains EMAC MOU's with States in Federal Emergency Management Agency (FEMA) Region III: Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.

Civil Support Team. The 33rd Civil Support Team (CST) is a component of the Army National Guard element of the DCNG. The 22 members of the DCNG CST serve in full-time Title 32 Army Guard Reserve (AGR) status. The DCNG CST is fully operational and was certified by the SecDef on 6 April 2007.

Dual Status Commander. IAW the National Guard Domestic Operations Manual, dated 20 May 2008, and NORAD/NORTHCOM Instruction 10-127, dated 13 October 2015, the SecDef may authorize and the Commanding General of the District of Columbia National Guard may consent to a District of Columbia National Guard officer or an active duty Regular Army or Air Force officer to serve in both a Federal and district status as a dual status commander.

Request for a Stafford Act Declaration. In lieu of a governor, the mayor of DC may request the President to issue a major disaster declaration or an emergency declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

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APPENDIX P DSCA SIMPLIFIED

Note: This information was modified from the material submitted by Mr. Robert Gonzales from the Office of the Staff Judge Advocate, ARNORTH.

The National Response Framework provides the Local-State-Federal response sequence. The legal basis for this National Response Doctrine is the Tenth Amendment to the Constitution. As a general rule, the Federal Government must wait for Local/State officials to request Federal assistance. When Federal assistance includes Department of Defense (DOD) participation, such involvement must be exercised under proper authority.

I. PRESIDENTIAL AUTHORITY

1. Although the President has the Constitutional and inherent authority to direct DOD to perform DSCA missions, he relies primarily on his statutory authority under the Robert T. Stafford Disaster Relief and Emergency Assistance Act of 1988. There are five ways he may exercise this statutory authority.

a. Major Disaster Declaration: issued in response to a request from a Governor for a natural catastrophe or any catastrophe as a result of a fire, flood, or explosion.

b. Emergency Declaration (State): issued in response to a request from a Governor for any occasion where Federal assistance is needed to save lives, protect public health or property, or lessen the threat of a catastrophe.

c. Emergency Declaration (Federal): issued by the President unilaterally for an emergency that primarily involves a Federal function, property, or personnel.

d. Accelerated Federal Assistance and Support Authority: post-declaration unilateral assistance by the President to save lives, prevent human suffering, or mitigate severe damage.

e. DOD Emergency Work Authority: pre-declaration assistance exercised in response to a request from a Governor, but only for DOD support to perform “emergency work” for a period not to exceed 10 days.

2. When the President issues a declaration, it will identify the counties covered and initiate the FEMA Action Request Form (ARF)/Mission Assignment (MA) process for Federal agencies, including DOD, to provide assistance.

II. SECRETARY OF DEFENSE AUTHORITY

The Secretary of Defense (SECDEF) is the authority to approve all DSCA ARFs, including those from FEMA. He has delegated some authority to the Assistant Secretary of Defense for Homeland Defense and Global Security (ASD (HD/GS)) (DODD 5111.13), Combatant Commanders (CCDR) (DSCA EXORD, 071415Z Jun 13), and military commanders and responsible civilian officials of DOD agencies (DODD 3025.18) as follows:

1. Immediate Response Authority (IRA) (DODD 3025.18): In response to a request from a civil authority, under imminently serious conditions when time does not permit obtaining approval

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from the SECDEF or his designee, military commanders and DOD civilian officials may take immediate action to save lives, prevent human suffering, or mitigate great property damage.

- a. Any person directing a response under IRA must “immediately” notify the National Joint Operations and Intelligence Center (NJOIC) of the details of the response at njoic.battlecaptain@js.pentagon.mil or 703-692-4595. For Army and Navy units, this means within two hours of the decision to provide assistance.
- b. Reassessment of continued IRA must be done NLT the 72-hour point after the request was received to determine if further assistance is needed.
- c. IRA will not be delayed or denied because of inability of the requester to reimburse DOD.
- d. IRA does not authorize DOD forces to perform law enforcement functions.

2. Mutual Aid Agreements (MAA) (DODI 6055.06): Commanders may execute MAA’s with the local community for emergency fire, medical, hazmat, and rescue services and personnel (see also DODI 6055.17).

III. DSCA VALIDATION CRITERIA

All DSCA requests will be evaluated by DOD approving/ recommending officials using the following six CARRLL validation criteria (DODD 3025.18).

1. Cost: How much will DOD assistance cost? Who will reimburse DOD for the assistance it provides?
2. Appropriateness: Is DOD the best option? Is another Federal agency or commercial enterprise better suited than DOD to provide the assistance?
3. Risk: What are the potential health and safety risks to DOD forces? Can they be mitigated?
4. Readiness: Will the assistance have an adverse impact on a unit’s readiness, training, or deployment mission?
5. Legality: Can the assistance be provided IAW the law? If prohibited, is there a legal exception?
6. Lethality: Is there any potential for the use of lethal force by or against DOD forces? Will the SECDEF authorize the carrying of weapons?

IV. ARMING AUTHORITY

1. DOD personnel are not authorized to carry individual service weapons during a DSCA mission unless authorized by the SECDEF or by DODD 5210.56.
2. When the SECDEF authorizes the carrying of weapons, the CDR retains the authority to establish and control the arming level/weapons status policy.

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V. POSSE COMITATUS ACT (PCA) (Title 10 USC 1385)

1. The major limitation on the DSCA authorities described above is the PCA. The PCA (and Encl 3 to DODI 3025.21) prohibits active duty members of the Army, Air Force, Navy, and Marine Corps from performing law enforcement functions, unless expressly authorized by the Constitution or an Act of Congress.
2. The PCA prohibitions also apply to members of the Reserves and National Guard personnel when in an active duty (Title 10) status, and civilian and contract personnel under the command and control of a Title 10 officer.
3. The PCA prohibition does not apply to members of the National Guard when in a non-Federal status, either State Active Duty (SAD) or Title 32. It also does not apply to members of the Coast Guard at any time or to any service member when acting in his/her private capacity.
4. The types of direct/active law enforcement functions the PCA prohibits are: arrest, apprehension, search, seizure, surveillance, security patrols, traffic control, crowd control, riot control, evidence collection, interrogation, acting as an undercover agent, and any other activity where civilians are subjected to military authority that is regulatory, proscriptive, or compulsory.

VI. CONSTITUTIONAL AND ACT OF CONGRESS EXCEPTIONS TO THE PCA

1. The Constitutional exception to the PCA resides with the President when he determines DOD forces are needed to perform law enforcement functions in order to fulfill his obligations under Article II of the Constitution to respond promptly in time of war, insurrection, or other serious national emergency. He could exercise this Constitutional exception by issuing a(n):
 - a. National Emergency Declaration.
 - b. Martial Law Proclamation.
 - c. Executive Order to protect Federal property, functions, or personnel, or conduct homeland defense ops.
2. There are at least twenty-five Acts of Congress that create exceptions to the PCA. The five primary ones are:
 - a. Military Support for Civilian Law Enforcement Agencies (Title 10 USC 371-382) allows the SECDEF or designated Secretary (Encl 3 to DODI 3025.21) to approve indirect, passive support to civilian law enforcement authorities, such as providing information concerning a violation of State or Federal laws, loaning military equipment, providing personnel to operate and/or maintain the loaned equipment, and providing basic training or expert advice.
 - b. Military Purpose Doctrine (Title 10 USC 375) allows DOD forces who are performing a military function to provide an “incidental” benefit to law enforcement authorities as well, such as a security patrol on a DOD-controlled area located off-post to protect DOD equipment and property that also serves as a deterrent to any criminal activity in the area.
 - c. Insurrection Statutes (Title 10 USC 331-334) allows the President to use DOD forces to restore law and order in a State under three circumstances: (1) insurrection against a State Government when requested by the State Legislature or, if not in session, the State Governor. (2) rebellion against the US Government that makes it impracticable to

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enforce US laws by judicial proceedings. (3) domestic violence that hinders the execution of Federal or State laws that protect individual Constitutional rights and the State is either unable or refuses to provide protection.

d. Emergency Situations Involving WMD (Title 10 USC 382) allows the SECDEF and Attorney General (AG) to jointly determine an emergency exists and then allows the SECDEF to provide DOD forces to only the AG to detect, disable, dispose of any type of WMD and to perform law enforcement functions when necessary for the immediate protection of human life and civilian law enforcement authorities are not capable of taking action.

e. Prohibited Transactions Involving Nuclear Materials (Title 18 USC 831) allows the SECDEF and AG to jointly determine an emergency exists and then allows the SECDEF to provide DOD forces to only the AG to perform certain law enforcement functions to prevent the unlawful possession, transfer, use, disposal, or dispersal of nuclear material.

VII. USE OF INCIDENT AWARENESS AND ASSESSMENT (IAA) ASSETS

1. Commanders may request CCDR approval for the use of intelligence capabilities for non-intelligence purposes in support of DSCA activities. The following seven IAA capabilities have been pre-approved by the SECDEF for DSCA uses: (a) situational awareness, (b) damage assessment, (c) evacuation monitoring, (d) search and rescue, (e) CBRNE assessment, (f) hydrographic survey, and (g) dynamic ground coordination.

2. Any request for imagery products requires compliance with NORAD and NORTHCOM Instruction 14-3.

3. Requests must include either a Proper Use Memorandum (PUM) or Domestic Imagery Legal Review (DILR) and be submitted thru G2 channels to NC-J23M.

VIII. UNMANNED AIRCRAFT SYSTEMS (UAS)

SecDef approval is required for all domestic use of UAS (including by the National Guard), except for search and rescue (SAR) missions involving potential loss of life that may be approved by a Combatant Commander.

IX. ECONOMY ACT (Title 31 USC 1535)

1. When there is no Presidential declaration under the Stafford Act, the Economy Act is the authority for one Federal agency to request assistance from another Federal agency on a reimbursable basis.

2. Reimbursement under the Economy Act is for “total” costs. Reimbursement under the Stafford Act is for “incremental” costs (para. C.9.3.3 of DOD 3025.1M).

3. The Economy Act is also the basis for the statement “Federal agencies will not compete with commercial businesses.” Actually, a Federal agency should not compete with a business that can provide goods and services more economically or conveniently.

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X. DUAL STATUS COMMANDER (DSC)

1. Title 32 USC 325 allows a National Guard (NG) officer to serve and command in both a Federal and non-Federal status in order to provide unity of effort and a common operating picture for both chains of command in a JTF.
2. An active duty Title 10 officer may also be designated a DSC under Title 32 USC 315. The SECDEF must approve a Title 10 officer to accept a commission offered by a Governor into his/her State NG.
3. IAW the NDAA FY12, a DSC should be the usual and customary C2 arrangement when Federal and State forces are employed simultaneously for a DSCA event.
4. The President delegated his full DSC approval authority to the SECDEF. The Governor of the designated NG officer must consent.
5. The DSC serves both the President and the Governor, but not simultaneously. He holds two hats, a Federal hat and a non-Federal hat, one in each hand, but he wears only one hat at a time. See NC Instruction 10-127.

XI. EMERGENCY MANAGEMENT ASSISTANCE COMPACT (EMAC)

1. EMAC is a non-binding agreement by its member States to assist one another to manage a disaster or an emergency after the Governor of the affected State has issued a State of Emergency Declaration.
2. All 50 States, the District of Columbia, Puerto Rico, Guam and the Virgin Islands are members of EMAC.
3. EMAC does not authorize the use of armed National Guard forces from one State to perform civil disturbance and law enforcement operations in another State. This type of assistance may be accomplished through a Memorandum of Understanding signed by the Governors.
4. The MOU should cover command relationship, immunity, arming level policy, law enforcement authority, and the State Rules for the Use of Force (RUF).

XII. STANDING RULES FOR USE OF FORCE (SRUF)

1. The SECDEF-approved SRUF are in Enclosures L and N to CJCSI 3121.01B, 13 June 2005, and applies to all Title 10 forces performing any type of DSCA and land homeland defense mission on US territory.
2. Commanders have a responsibility to teach and train the SRUF. Units should not deploy from home station until personnel are briefed on the SRUF and provided with an SRUF card or brochure.

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**APPENDIX Q
SRUF SIMPLIFIED**

Note: This information was modified from the material submitted by Mr. Robert Gonzales from the Office of the Staff Judge Advocate, ARNORTH.

The SECDEF has approved the following SRUF for use in all DSCA and homeland defense operations. Commanders at all levels have the responsibility to teach and train on these rules. Units will be briefed on these rules prior to deployment from home station for any DSCA or homeland defense mission.

RULE 1: LIMITATIONS ON THE USE OF FORCE

A SOLDIER will use force of any kind only as a last resort and, if used, the force should be the minimum necessary to control the situation, to accomplish the mission, or in self-defense or defense of others/property.

Rule 1.1: Reasonable - Any use of force must be reasonable in intensity, duration, and magnitude to counter the threat based on all of the circumstances.

Rule 1.2: Safety - Exercise due regard for the safety of innocent bystanders when using any type of force.

Rule 1.3: Warning Shots - Warning shots are NOT authorized.

RULE 2: DE-ESCALATION

When time and circumstances permit, a SOLDIER will give a threatening force warnings and an opportunity to withdraw or stop the threatening actions before using force.

Rule 2.1: Avoid Confrontation - Avoid confrontation with individuals who pose no threat to the unit, to non-DOD persons in the vicinity, or property secured by DOD forces.

Rule 2.2: Notify CLEA - Increase self-defense posture and notify civilian law enforcement authorities (CLEA) or security agency personnel as soon as practicable if confrontation appears likely, civilians are acting in a suspicious manner, or immediately after a confrontation.

RULE 3: INDIVIDUAL SELF-DEFENSE

A SOLDIER may exercise individual self-defense in response to a hostile act or demonstrated hostile intent.

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Rule 3.1: Limit on Self-Defense - A COMMANDER may limit individual self-defense by members of his unit.

RULE 4: UNIT SELF-DEFENSE

A COMMANDER always has the inherent right and obligation to exercise unit self-defense in response to a hostile act or demonstrated hostile intent. Hostile act is an attack or other use of force against the US, US forces or other designated persons or property. Hostile intent is the threat of imminent use of force against the US, US forces or other designated persons or property. Both also include either force used directly or the threat of force, respectively, to preclude or impede the mission and/or duties of US forces, including the recovery of US personnel or vital USG property.

RULE 5: USE OF NON-DEADLY FORCE

A SOLDIER may use non-deadly force to stop a threat and it is reasonably necessary:
to control a situation and accomplish the mission,
to provide protection for himself and other DOD personnel,
to defend non-DOD persons in the vicinity, but only IF directly related to the assigned mission, or
to defend designated protected property.

RULE 6: USE OF DEADLY FORCE IN SELF-DEFENSE, DEFENSE OF OTHERS, AND DEFENSE OF DESIGNATED PROPERTY

A SOLDIER may use deadly force only when all lesser means have failed or cannot reasonably be employed AND it reasonably appears necessary:
to protect DOD forces when a commander reasonably believes a person poses an imminent threat of death or serious bodily harm,
to protect yourself and other DOD forces from the imminent threat of death or serious bodily harm,
to protect non-DOD persons in the vicinity from the imminent threat of death or serious bodily harm, but only IF directly related to the assigned mission,
to prevent the actual theft or sabotage of assets vital to national security or inherently dangerous property, and
to prevent the sabotage of a national critical infrastructure.

Rule 6.1: Use of Deadly Force NOT Authorized – Deadly force is not authorized to disperse a crowd, to stop looting, to enforce a curfew, or to protect non-designated property.

RULE 7: USE OF DEADLY FORCE AGAINST A SERIOUS OFFENSE

A SOLDIER may use deadly force, but only IF it is directly related to the assigned mission AND it reasonably appears necessary:

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to prevent a serious crime against any person that involves imminent threat of death or serious bodily harm (murder, armed robbery, aggravated assault or arson),
to prevent the escape of a prisoner where probable cause indicates he has committed or attempted to commit a serious offense and would pose an imminent threat of death or serious bodily harm to DOD forces or others in the vicinity,
to arrest or apprehend a person who, there is probable cause to believe, has committed a serious offense that involved imminent threat of death or serious bodily harm.

RULE 8: USE OF DEADLY FORCE AGAINST A VEHICULAR THREAT

A SOLDIER may fire his weapon at a moving land or water vehicle when he reasonably believes the vehicle poses an imminent threat of death or serious bodily harm to DOD forces or to non-DOD persons in the vicinity, but only IF doing so is directly related to the assigned mission.

**RULE 9: INSPECTION OF PERSONNEL ENTERING AND EXITING
AREA**

A SOLDIER may inspect individuals and property, per command security guidance, prior to granting that person or property entry inside a DOD perimeter or secured area and upon leaving such an area.

Rule 9.1: Denied Access - An individual or property that does not meet the command security requirements for entry may be denied access inside a DOD perimeter or secured area.

RULE 10: TEMPORARY DETENTION OF THREATENING PERSONNEL

A SOLDIER may temporarily detain an individual:

who has gained unauthorized access inside perimeters or other secured areas,
who refuses to depart such an area after being denied access,
who otherwise threatens the safety and security of DOD forces, property secured by DOD forces, or non-DOD persons in the vicinity but only IF their defense is directly related to the assigned mission.

Rule 10.1: Search - Detained individuals, vehicles, and property may be searched as a force protection measure.

Rule 10.2: Released to CLEA - Detained individuals and any secured property will be released to CLEA at the earliest opportunity consistent with mission accomplishment.

RULE 11: PURSUIT AND RECOVERY OF STOLEN PROPERTY

A SOLDIER may pursue and recover stolen assets vital to national security or inherently dangerous property if: CLEA or security forces are not reasonably available to recover them,

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and Commander, USNORTHCOM, has pre-authorized the pursue and recovery mission, and the pursuit is immediate, continuous, and uninterrupted.

Rule 11.1: Contact CLEA - DOD forces will contact CLEA as soon as practicable to inform them of the theft/pursuit.

RULE 12: REPORT VIOLATIONS OF THE SRUF

A SOLDIER will IMMEDIATELY report any violation of or non-compliance with the SRUF to the chain of command, Inspector General, Judge Advocate, Chaplain, or any commissioned officer with information concerning who, what, when, where, and why.

Commander's SRUF Responsibilities

RULE 1: TEACH AND TRAIN

A COMMANDER must teach, train, and implement the SRUF to his Soldiers prior to deployment from home station for any mission.

RULE 2: UNIT SELF-DEFENSE

A COMMANDER retains the inherent right and obligation of unit self-defense and defense of other DOD forces in the vicinity in response to a hostile act or demonstrated hostile intent.

RULE 3: INDIVIDUAL SELF-DEFENSE

A COMMANDER may limit the right of individual self-defense.

RULE 4: COORDINATE SRUF

A COMMANDER will coordinate the SRUF with civilian law enforcement authorities (CLEA) or contract security forces when operating in conjunction with them to ensure a common understanding. Any RUF issues that cannot be resolved will be forwarded to the SECDEF thru the chain of command and CJCS.

RULE 5: IMMINENT THREAT

A COMMANDER will determine if a threat of death or serious bodily harm by an individual or motor vehicle is imminent based on an assessment of all the circumstances. If he determines such a threat is imminent, deadly force is authorized to stop the threat.

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RULE 6: INHERENTLY DANGEROUS PROPERTY

A COMMANDER may designate DOD property or property having a DOD connection as inherently dangerous. This includes weapons, ammunition, explosives, portable missiles, rockets, chemical agents, and special nuclear materials.

RULE 7: PURSUE AND RECOVER

A COMMANDER may not authorize forces to pursue and recover stolen assets vital to national security or inherently dangerous property unless delegated this authority by the CDR, USNORTHCOM. Any pursuit must be immediate, continuous, and uninterrupted.

RULE 8: MISSION-SPECIFIC RUF

A COMMANDER may request SECDEF-approval of mission-specific RUF based on mission requirements thru the chain of command and CJCS. A COMMANDER of a unit detailed to another Federal agency will ensure his unit is operating under a common mission-specific RUF approved by the SECDEF and the Federal agency.

RULE 9: IMPOSED RESTRICTIONS

A COMMANDER may impose restrictions to the SECDEF-approved SRUF or mission-specific RUF, but must notify SECDEF thru the chain of command and CJCS of imposing the restrictions as soon as practicable.

RULE 10: INVESTIGATE VIOLATIONS

A COMMANDER will IMMEDIATELY report any suspected violation of or non-compliance with the SRUF thru the chain of command to CDR, USNORTHCOM, ATTN: SJA; investigate any suspected violation of or non-compliance with the SRUF; and preserve all evidence.

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APPENDIX R TOP 15 IRA QUESTIONS AND ANSWERS

Note: This information was modified from the material submitted by Mr. Robert Gonzales from the Office of the Staff Judge Advocate, ARNORTH.

The SECDEF has delegated some of his DSCA authority to Federal military commanders, Heads of DoD components, and responsible DoD civilian officials. One of these delegations is provided in paragraph 4i of DODD 3025.18 and is known as Immediate Response Authority (IRA).

I. IRA IAW DODD 3025.18

In response to a “request for assistance” from a “civil authority,” under “imminently serious conditions” and when time does not permit approval from “higher authority,” Federal military “commanders,” Heads of DoD Components, and responsible DoD civilian 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. This is known as Immediate Response Authority (IRA).

IRA does not permit actions that would subject civilians to the use of military power that is regulatory, prescriptive, proscriptive, or compulsory. In other words, IRA does not authorize DoD personnel to perform direct/active law enforcement functions in violation of the Posse Comitatus Act.

1. Can assistance be provided under IRA without a “request for assistance” from a civil authority?

No. There must be a request for assistance from a civil authority.

2. Who qualifies as a “civil authority?”

A civil authority is a person elected or appointed to a position within the governments of the US, State, District of Columbia, Puerto Rico, Virgin Islands, Guam, US territories, or any political subdivision thereof.

3. What is the proper form for a “request for assistance?”

A civil authority may make an initial oral request, but it must be followed up in writing that includes a statement concerning reimbursement to DoD. See Questions 9 and 10.

4. What does “imminent serious conditions” mean?

It means “emergency conditions in which, in the judgment of the military commander or DoD official, immediate and possibly serious danger threatens the public and prompt action is needed to save lives, prevent human suffering, or mitigate great property damage.” IRA may be used from a small incident to a complex catastrophe.

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5. Who is “higher authority?”

For purposes of IRA, higher authority is the SecDef.

6. Who qualifies as a “commander?”

A commander is a commissioned or warrant officer who, by virtue of rank, assignment, and pursuant to official orders, exercises primary command and UCMJ authority over a military organization or prescribed territorial area, which under official regulations is recognized as a command. A request for assistance should be directed to the installation commander or other appropriate DoD official responsible for the installation or facility.

7. Can a higher headquarters provide supplemental direction on IRA?

Yes. A higher headquarters may supplement the DoD directive provisions of IRA.

8. What are examples of assistance that can be provided under IRA?

- a. Assisting with the rescue, evacuation, and emergency medical treatment of casualties.
- b. Maintaining or restoring emergency medical capabilities; safeguarding the public health.
- c. Assisting with the emergency restoration of essential public services and utilities, including firefighting, water, communications, transportation, power, fuel.
- d. Assisting with emergency clearance of debris, rubble, and explosive ordnance from public facilities and other areas to permit rescue or movement of people and restoration of essential services.
- e. Monitoring and decontaminating radiological and chemical effects; controlling contaminated areas.
- f. Managing biological effects and submitting reports through the national warning and hazard control systems.
- g. Roadway movement planning.
- h. Collecting and distributing water, food, essential supplies on the basis of critical priorities.
- i. Performing damage assessments.
- j. Providing interim emergency communications.
- k. Providing medical countermeasures distribution support.
- l. Providing explosive ordnance disposal IAW DODD 3025.18, DODI 3025.21, and Parts 260-270 of Title 40, Code of Federal Regulations.

II. REIMBURSEMENT

Support provided under IRA **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.

9. Must reimbursement be requested?

Yes. Commanders and DoD officials must notify the civil authority that support provided under IRA is on a cost-reimbursable basis, unless non-reimbursement is authorized by law.

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10. Can IRA assistance be provided even though the civil authority indicates it cannot reimburse DoD?

Yes. The inability or unwillingness to reimburse DoD is not a show-stopper for support under IRA.

11. How is reimbursement made?

Reimbursement from non-Federal civil authorities is made to the US Treasury IAW Title 31 USC Sections 3302/9701. Reimbursement from Federal entities is made to the DoD organization providing the support IAW the Economy Act.

III. DISTANCE

DODD 3025.18 does not specify a maximum allowable distance from the installation or facility to the location where assistance is needed. DoD officials must exercise good judgment based on available information and resources in determining the maximum allowable distance from the installation or facility to where the Immediate Response may take place. Factors to consider are sustainment, transportation, communications, mission impact, and increased risk.

12. How far away can IRA assistance be provided?

The word “local” was intentionally removed from the previous definition of IRA to give commanders and DoD officials the flexibility to respond to a request for an incident that occurred hundreds of miles away from the installation, as long as the response is otherwise “immediate.”

IV. Duration of IRA

An Immediate Response shall END when the necessity giving rise to the response is no longer present (e.g., when there are sufficient resources 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 to continue a response under this authority as soon as practicable but, if Immediate Response activities have not yet ended, NLT 72 hours after the request for assistance was received.

13. Is IRA assistance limited to 72 hours?

No. The official who approved IRA may approve continued assistance beyond 72 hours if his 72-hour assessment determines continued assistance is necessary because “imminent serious conditions” still exist. Notify the National Joint Operations and Intelligence Center (NJOIC) of the decision to continue assistance under IRA.

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V. REPORTING REQUIREMENT

The DoD official directing a response under IRA must “immediately” notify the NJOIC through the unit’s higher headquarters and chain of command of the details of the response at jnoic.battlecaptain @js.pentagon.mil or 703-692-4595.

14. How soon is “immediately?”

“Immediately” means within two hours of the decision to provide assistance. The NJOIC will inform the ASD (HD&GS), ASD(Public Affairs), Joint Staff J33, Geographic Combatant Command, and National Guard Bureau.

15. What information needs to be submitted in the report to the NJOIC?

The CJCS DSCA EXORD requires that the notification to the NJOIC include the following:

- a. civil authority requesting DoD support and the time the request was received.
- b. type of support requested.
- c. description of the incident.
- d. number, by type, of DoD assets or installation support provided.
- e. status of DoD personnel (military, civilian, or contractor).
- f. duration of support, and
- g. cost of the DoD support.

VI. IRA and the US Army Reserve

1. IAW USARC OPORD 18-046, Annex C, Appendix 3, paragraph 3c(5)(a) all Army Reserve personnel conducting operations under IRA will be in a paid duty status. Paid status will be either RST, ATA, ECT, ADT.

2. Participation in an unpaid status for “points only” is not authorized.

3. IAW USARC OPORD 18-046, Annex C, Appendix 3, paragraph 3c(2)(b), in the event Immediate Response Authority (IRA) occurs, 2 hours after the response is initiated, notify Army Reserve command elements, ARNORTH AREC, NORTHCOM ARET, FEMA Regional Defense Coordinating Officer, FORSCOM Watch, Army Operations Center, and the NJOIC and AOC.

VII. IRA and CATASTROPHIC INCIDENT

Joint Publication 3-28 on DSCA at page II-5/6 states:

“(5) The distance from the incident to the DOD office or installation is not a limiting factor for the provision of support under Immediate Response Authority. However, DOD officials should use the distance and the travel time to provide support as a factor in determining DOD’s ability to support the request for Immediate Response. (6) The scale of the event should also be a determining factor for whether or not to provide support to incidents that are

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several miles or hundreds of miles away from the installation under Immediate Response Authority. In some cases of a catastrophic incident, the demands for life-saving and life-sustaining capabilities may exceed both the State's and USG's ability to mobilize sufficient resources to meet the demand. In these circumstances, installations and facilities that are not directly impacted should be prepared to provide Immediate Response support if they are able to save lives, prevent human suffering, or prevent great property damage.”

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