



Defense Support of Civil Authorities Info Paper

I. Presidential Authority

The President can use DoD assets and personnel to support civil authorities during emergencies or disasters when issuing a declaration under the Stafford Act.

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 Request for Assistance (RFA)/Mission Assignment (MA) process for Federal agencies, including DoD, to provide assistance.

II. DSCA Validation Criteria (CARRL Factors)

All DSCA requests should be evaluated based on its cost, appropriateness, risk to personnel, impact on readiness, legality, and impact on lethality.

All DSCA requests will be evaluated by DoD approving/recommending officials using the following six CARRLL validation criteria (see 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?

III. Secretary of Defense Authority

The Secretary of Defense (SECDEF) is the authority to approve all DSCA RFAs, 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, 301600Z Jul 19), and military commanders and responsible civilian



Defense Support of Civil Authorities Info Paper

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 from the SECDEF or his designee, military (installation) 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 (see paragraph 4.8.4.A of the current DSCA EXORD) at JS.PENTAGON.J3.MBX.NJOIC-BATTLECAPTAIN-NMCC@MAIL.MIL or 703-692-4595. For Army, Navy, and Air Force units, this means within two hours of the decision to provide assistance.

b. Reassessment of continued IRA must be done NL T 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.

e. Exercise good judgment in determining the maximum distance to respond, but yet be immediate.

2. Distance: The Incident can be several hundreds of miles from the installation as long as the response is "immediate."

3. Mutual Aid Agreements (MAA) (DoDI 6055.06): Commanders may execute MAA's with the local community for emergency fire, medical, and rescue services and personnel (see also DODI 6055.17).

IV. Economy Act (Title 31 USC 1535)

The Economy Act allows Federal agencies to request assistance from the Army if the assistance cannot be provided as conveniently or cheaply by a commercial enterprise.

1. All support requests must go from a Federal Agency to the DOD for approval. All ad hoc requests to USAR personnel or units must be reported through the Chain of Command to FORSCOM Current Operations.
2. 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.
3. 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 3025.1 M).
4. 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.

V. Defense Support of Civilian Law Enforcement Agencies (DSCLEA)

SECDEF is the approval authority for DSCLEA missions.

1. The SECDEF is the approval authority for DSCLEA, unless delegated to Service Secretaries in DoDI 3025.21.
2. SECDEF has retained the authority to approve all direct/active type of law enforcement; when there is the possibility of the use of lethal force by or against DoD personnel; and requests for arms, ammunition, combat vehicles, aircraft to transport CLEA personnel, and operate equipment to detect/monitor/communicate movement of surface traffic outside of the US.
3. SECDEF may waive reimbursement if support is during normal military training or operations, or results in a training or operational benefit to DoD.



Defense Support of Civil Authorities Info Paper

VI. Posse Comitatus Act (PCA) (Title 10 USC 1385)

The Posse Comitatus Act prohibits Title 10 soldiers from performing civilian law enforcement functions.

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, Marine Corps, and Space Force from performing law enforcement functions, unless expressly authorized by the Constitution/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, operating/manning/staffing checkpoints, 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.

VII. Constitutional and Act of Congress Exceptions to the PCA

Exceptions to the PCA include national emergency declarations, martial law proclamations, and executive orders to protect federal property. Legislative exceptions, subject to SECDEF approval, include loaning equipment, training, maintenance, and expert advice.

- I. 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 operations.
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 271-282) allows the SECDEF or designated Secretary (see 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 275) allows DoD forces who are performing a military function to provide an "incidental" benefit to law enforcement authorities as well, such as convoy security or a security patrol on a DoD-controlled area located off-post to



Defense Support of Civil Authorities Info Paper

protect DoD equipment and property.

c. Insurrection Statutes (Title 10 USC 251-254)

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 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 282) 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 allow the SECDEF to provide DOD forces to the AG to perform certain law enforcement functions to prevent the unlawful possession, transfer, use, disposal, or dispersal of nuclear material.

f. Title 6 USC 45S(b) and Title 49 USC 324 allow DoD to "detail" support to DHS and DoT, respectively, with a Cooperative Agreement.

VIII. Dual Status Commander (DSC)

A dual status commander can command both National Guard and Federal troops.

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 NOAA FV12, 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 NG Instruction 10-127.

IX. Emergency Management Assistance Compact (EMAC)

EMACs are mutual aid agreements that allow States to aid one another. EMACs do not authorize NG troops to perform law enforcement functions in another State. Rather, this should be accomplished by a memorandum of understanding.

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



Defense Support of Civil Authorities Info Paper

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 (MOU) 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 (SRUF).

X. Standing Rules for the Use of Force (SRUF)

The SRUF apply to all Title 10 forces performing DoD missions within the U.S., and commanders must ensure his/her units are briefed on the SRUF prior to deploying to home station.

1. The SECDEF-approved SRUF are in Enclosures Land N to CJCSI 3121.01B, and apply to all Title 10 forces performing any type of DoD mission on US territory.
2. A commanders must ensure his/her unit is briefed on the SRUF prior to deploying from home station.

XI. Arming Authority

SECDEF authorizes the carrying of weapons. CCDR can determine arming posture and policy.

1. Except for law enforcement, force protection, and security personnel who carry an issued firearm for duty on a routine basis, DoD personnel are not authorized to carry individual service weapons during a DSCA mission unless authorized by the SECDEF.
2. When the SECDEF authorizes the carrying of weapons, the CCDR retains the authority to establish and change the arming posture/weapons status policy.

XII. CONUS Evacuation Authority

Servicemembers are put on TDY and are not “evacuated.” Civilians and servicemember dependents may be evacuated by any supervisor or commander.

1. Active Duty Service Members:
 - a. At the discretion of the Evacuation Authority/Command, Active Duty members are sent to a location in a TDY travel status.
 - b. Active Duty members are not placed in an evacuation status and are not authorized evacuation allowances.
 - c. In order to receive TDY travel entitlements the alternate duty site (TDY location) must be 51 miles or more from their permanent duty station.
 - d. The authority to order service members on TDY, away from a disaster area, for within CONUS and non-foreign OCONUS locations, lies with the Area or District Commander.
2. Servicemember’s Dependent, Civilian Employee, and Civilian Employee’s Dependent:
 - a. The authority to issue an evacuation order lies with Secretary of Defense, 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.
 - b. Civilian Employees, Civilian Employee Dependents, and Service Member Dependents are authorized evacuation allowances.