

**APPENDIX 12.  
RULES FOR THE USE OF FORCE FOR THE NATIONAL GUARD**

**Appendix 12-1: 32 USC § 502- Required Drills and Field Exercises**

Sec. 502. - Required drills and field exercises

(a) Under regulations to be prescribed by the Secretary of the Army or the Secretary of the Air Force, as the case may be, each company, battery, squadron, and detachment of the National Guard, unless excused by the Secretary concerned, shall -

- (1) assemble for drill and instruction, including indoor target practice, at least 48 times each year; and
- (2) participate in training at encampments, maneuvers, outdoor target practice, or other exercises, at least 15 days each year.

However, no member of such unit who has served on active duty for one year or longer shall be required to participate in such training if the first day of such training period falls during the last one hundred and twenty days of his required membership in the National Guard.

(b) An assembly for drill and instruction may consist of a single ordered formation of a company, battery, squadron, or detachment, or, when authorized by the Secretary concerned, a series of ordered formations of parts of those organizations. However, to have a series of formations credited as an assembly for drill and instruction, all parts of the unit must be included in the series within 90 consecutive days.

(c) The total attendance at the series of formations constituting an assembly shall be counted as the attendance at that assembly for the required period. No member may be counted more than once or receive credit for more than one required period of attendance, regardless of the number of formations that he attends during the series constituting the assembly for the required period.

(d) No organization may receive credit for an assembly for drill or indoor target practice unless -

- (1) the number of members present equals or exceeds the minimum number prescribed by the President;
- (2) the period of military duty or instruction for which a member is credited is at least one and one-half hours; and
- (3) the training is of the type prescribed by the Secretary concerned.

(e) An appropriately rated member of the National Guard who performs an aerial flight under competent orders may receive credit for attending drill for the purposes of this section, if the flight prevented him from attending a regularly scheduled drill.

(f) Under regulations to be prescribed by the Secretary of the Army or Secretary of the Air Force, as the case may be, a member of the National Guard may -

- (1) without his consent, but with the pay and allowances provided by law; or
- (2) with his consent, either with or without pay and allowances;

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be ordered to perform training or other duty in addition to that prescribed under subsection (a). Duty without pay shall be considered for all purposes as if it were duty with pay

### **Appendix 12-2: Emergency Management Assistance Compact (EMAC)**

See next page.

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110 STAT. 3877

Public Law 104-321  
104th Congress

Joint Resolution

Granting the consent of Congress to the Emergency Management Assistance Compact.

Oct. 19, 1996  
[H.J. Res. 193]

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,*

SECTION 1. CONGRESSIONAL CONSENT.

State listing.

The Congress consents to the Emergency Management Assistance Compact entered into by Delaware, Florida, Georgia, Louisiana, Maryland, Mississippi, Missouri, Oklahoma, South Carolina, South Dakota, Tennessee, Virginia, and West Virginia. The compact reads substantially as follows:

**“Emergency Management Assistance Compact**

“ARTICLE I.

“PURPOSE AND AUTHORITIES.

“This compact is made and entered into by and between the participating member states which enact this compact, hereinafter called party states. For the purposes of this compact, the term ‘states’ is taken to mean the several states, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territorial possessions.

“The purpose of this compact is to provide for mutual assistance between the states entering into this compact in managing any emergency disaster that is duly declared by the Governor of the affected state, whether arising from natural disaster, technological hazard, man-made disaster, civil emergency aspects of resources shortages, community disorders, insurgency, or enemy attack.

“This compact shall also provide for mutual cooperation in emergency-related exercises, testing, or other training activities using equipment and personnel simulating performance of any aspect of the giving and receiving of aid by party states or subdivisions of party states during emergencies, such actions occurring outside actual declared emergency periods. Mutual assistance in this compact may include the use of the states’ National Guard forces, either in accordance with the National Guard Mutual Assistance Compact or by mutual agreement between states.

## “ARTICLE II.

## “GENERAL IMPLEMENTATION.

“Each party state entering into this compact recognizes that many emergencies transcend political jurisdictional boundaries and that intergovernmental coordination is essential in managing these and other emergencies under this compact. Each state further recognizes that there will be emergencies which require immediate access and present procedures to apply outside resources to make a prompt and effective response to such an emergency. This is because few, if any, individual states have all the resources they may need in all types of emergencies or the capability of delivering resources to areas where emergencies exist.

“The prompt, full, and effective utilization of resources of the participating states, including any resources on hand or available from the federal government or any other source, that are essential to the safety, care, and welfare of the people in the event of any emergency or disaster declared by a party state, shall be the underlying principle on which all articles of this compact shall be understood.

“On behalf of the Governor of each state participating in the compact, the legally designated state 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.

## “ARTICLE III.

## “PARTY STATE RESPONSIBILITIES.

“A. It shall be the responsibility of each party state to formulate procedural plans and programs for interstate cooperation in the performance of the responsibilities listed in this article. In formulating such plans, and in carrying them out, the party states, insofar as practical, shall:

“1. Review individual state hazards analyses and, to the extent reasonably possible, determine all those potential emergencies the party states might jointly suffer, whether due to natural disaster, technological hazard, man-made disaster, emergency aspects of resources shortages, civil disorders, insurgency, or enemy attack;

“2. Review party states’ individual emergency plans and develop a plan which will determine the mechanism for the interstate management and provision of assistance concerning any potential emergency;

“3. Develop interstate procedures to fill any identified gaps and to resolve any identified inconsistencies or overlaps in existing or developed plans;

“4. Assist in warning communities adjacent to or crossing the state boundaries;

“5. Protect and assure uninterrupted delivery of services, medicines, water, food, energy and fuel, search and rescue, and critical lifeline equipment, services, and resources, both human and material;

“6. Inventory and set procedures for the interstate loan and delivery of human and material resources, together with procedures for reimbursement or forgiveness; and

“7. Provide, to the extent authorized by law, for temporary suspension of any statutes or ordinances that restrict the implementation of the above responsibilities.

“B. The authorized representative of a party state may request assistance to another party state by contacting the authorized representative of that state. The provisions of this compact shall only apply to requests for assistance made by and to authorized representatives. Requests may be verbal or in writing. If verbal, the request shall be confirmed in writing within thirty days of the verbal request. Requests shall provide the following information:

“1. A description of the emergency service function for which assistance is needed, including, but not limited to, 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;

“2. The amount and type of personnel, equipment, materials and supplies needed, and a reasonable estimate of the length of time they will be needed; and

“3. The specific place and time for staging of the assisting party’s response and a point of contact at that location.

“C. There shall be frequent consultation between state officials who have assigned emergency management responsibilities and other appropriate representatives of the party states with affected jurisdictions and the United States Government, with free exchange of information, plans, and resource records relating to emergency capabilities.

#### “ARTICLE IV.

##### “LIMITATIONS.

“Any party state requested to render mutual aid or conduct exercises and training for mutual aid shall take such action as is necessary to provide and make available the resources covered by this compact in accordance with the terms hereof; provided that it is understood that the state rendering aid may withhold resources to the extent necessary to provide reasonable protection for such state.

“Each party state shall afford to the emergency forces of any party state, while operating within its state limits under the terms and conditions of this compact, the same powers, except that of arrest unless specifically authorized by the receiving state, duties, rights, and privileges as are afforded forces of the state in which they are performing emergency services. Emergency forces will continue under the command and control of their regular leaders, but the organizational units will come under the operational control of the emergency services authorities of the state receiving assistance. These conditions may be activated, as needed, only subsequent to a declaration of a state emergency or disaster by the governor of the party state that is to receive assistance or upon commencement of exercises or training for mutual aid and shall continue so long as the exercises or training for mutual aid are in progress, the state of emergency or disaster remains in effect, or loaned resources remain in the receiving state, whichever is longer.

## “ARTICLE V.

## “LICENSES AND PERMITS.

“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.

## “ARTICLE VI.

## “LIABILITY.

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

## “ARTICLE VII.

## “SUPPLEMENTARY AGREEMENTS.

“Inasmuch as it is probable that the pattern and detail of the machinery for mutual aid among two or more states may differ from that among the states that are party hereto, this compact contains elements of a broad base common to all states, and nothing herein shall preclude any state entering into supplementary agreements with another state or affect any other agreements already in force between states. Supplementary agreements may comprehend, but shall not be limited to, provisions for evacuation and reception of injured and other persons and the exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and communications personnel, and equipment and supplies.

## “ARTICLE VIII.

## “COMPENSATION.

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

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## “ARTICLE IX.

## “REIMBURSEMENT.

“Any party state rendering aid in another state pursuant to this compact shall be reimbursed by the party state receiving such aid for any loss or damage to or expense incurred in the operation of any equipment and the provision of any service in answering a request for aid and for the costs incurred in connection with such requests; provided, that any aiding party state may assume in whole or in part such loss, damage, expense, or other cost, or may loan such equipment or donate such services to the receiving party state without charge or cost; and provided further, that any two or more party states may enter into supplementary agreements establishing a different allocation of costs among those states. Article VIII expenses shall not be reimbursable under this article.

## “ARTICLE X.

## “EVACUATION.

“Plans for the orderly evacuation and interstate reception of portions of the civilian population as the result of any emergency or disaster of sufficient proportions to so warrant, shall be worked out and maintained between the party states and the emergency management/services directors of the various jurisdictions where any type of incident requiring evacuations might occur. Such plans shall be put into effect by request of the state from which evacuees come and shall include the manner of transporting such evacuees, the number of evacuees to be received in different areas, the manner in which food, clothing, housing, and medical care will be provided, the registration of the evacuees, the providing of facilities for the notification of relatives or friends, and the forwarding of such evacuees to other areas or the bringing in of additional materials, supplies, and all other relevant factors. Such plans shall provide that the party state receiving evacuees and the party state from which the evacuees come shall mutually agree as to reimbursement of out-of-pocket expenses incurred in receiving and caring for such evacuees, for expenditures for transportation, food, clothing, medicines, and medical care, and like items. Such expenditures shall be reimbursed as agreed by the party state from which the evacuees come. After the termination of the emergency or disaster, the party state from which the evacuees come shall assume the responsibility for the ultimate support of repatriation of such evacuees.

## “ARTICLE XI.

## “IMPLEMENTATION.

“A. This compact shall become effective immediately upon its enactment into law by any two states. Thereafter, this compact shall become effective as to any other state upon enactment by such state.

Effective date.

“B. Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until thirty days after the Governor of the withdrawing state has given notice in writing of such withdrawal to the Governors of all other party states. Such action shall not relieve

the withdrawing state from obligations assumed hereunder prior to the effective date of withdrawal.

“C. Duly authenticated copies of this compact and of such supplementary agreements as may be entered into shall, at the time of their approval, be deposited with each of the party states and with the Federal Emergency Management Agency and other appropriate agencies of the United States Government.

“ARTICLE XII.

“VALIDITY.

“This compact shall be construed to effectuate the purposes stated in Article I. If any provision of this compact is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of this compact and the applicability thereof to other persons and circumstances shall not be affected.

“ARTICLE XIII.

“ADDITIONAL PROVISIONS.

“Nothing in this compact shall authorize or permit the use of military force by the National Guard of a state at any place outside that state in any emergency for which the President is authorized by law to call into federal service the militia, or for any purpose for which the use of the Army or the Air Force would in the absence of express statutory authorization be prohibited under § 1385 of Title 18 of the United States Code.”.

**SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.**

The right to alter, amend, or repeal this joint resolution is hereby expressly reserved. The consent granted by this joint resolution shall—

(1) not be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the subject of the compact;

(2) not be construed as consent to the National Guard Mutual Assistance Compact;

(3) be construed as understanding that the first paragraph of Article II of the compact provides that emergencies will require procedures to provide immediate access to existing resources to make a prompt and effective response;

(4) not be construed as providing authority in Article III A. 7. that does not otherwise exist for the suspension of statutes or ordinances;

(5) be construed as understanding that Article III C. does not impose any affirmative obligation to exchange information, plans, and resource records on the United States or any party which has not entered into the compact; and

(6) be construed as understanding that Article XIII does not affect the authority of the President over the National Guard provided by article I of the Constitution and title 10 of the United States Code.

**SEC. 3. CONSTRUCTION AND SEVERABILITY.**

It is intended that the provisions of this compact shall be reasonably and liberally construed to effectuate the purposes

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thereof. If any part or application of this compact, or legislation enabling the compact, is held invalid, the remainder of the compact or its application to other situations or persons shall not be affected.

**SEC. 4. INCONSISTENCY OF LANGUAGE.**

The validity of this compact shall not be affected by any insubstantial difference in its form or language as adopted by the States.

Approved October 19, 1996.

### **Appendix 12-3: RUF and State criminal law**

#### **CIVILIAN LAW ENFORCEMENT RULES FOR USE OF FORCE**

During domestic operations, federal military missions may include support to federal, state, or local civilian law enforcement agencies. When deployed in support of such missions, Judge Advocates must be aware of the supported civilian law enforcement agencies' RUF, and the greater or lesser use of force permissible for local, state and federal law enforcement agencies under federal, state, and local statutes, agency regulations, policies, and judicial decisions. The following discussion provides an abbreviated view of typically permissible actions available to civilian law enforcement agencies operating within their jurisdictions. A Judge Advocate's role in domestic operations may be to coordinate and deconflict, when necessary, law enforcement RUF that permit civilian agencies greater use of force than would be permitted for Title 10 military personnel under the same or similar circumstances.

In addition to this Handbook, federal civilian law enforcement resources include the Department of Homeland Security's Federal Law Enforcement Training Center: *Legal Divisions Reference Book*, and the Department of Homeland Security Office of the General Counsel: *Legal Authorities Handbook*.

#### **DEPARTMENT OF HOMELAND SECURITY**

As a result of the 911 terrorist attacks, several autonomous and semi-autonomous federal agencies were consolidated into the newly created Department of Homeland Security. CONUS Judge Advocates deployed in support of civilian law enforcement agencies should become familiar with the Department of Homeland Security (DHLS) law enforcement agencies they may be supporting:

*Transportation Security Administration (TSA)*: Protects U.S. transportation systems and facility; ensures free and secure movement of people and commerce.

*U.S. Citizenship and Immigration Services (USCIS)*: Grants immigration and citizenship status; ensures the integrity of the immigration system.

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*U.S. Coast Guard (USCG):* The principal federal agency for maritime safety and security. In wartime, USCG can be consolidated with the U.S. Navy for military missions.

*U.S. Customs and Border Protection (CBP):* The agency responsible for protecting U.S. borders and operating points of entry into the U.S.

*U.S. Immigration and Customs Enforcement (ICE):* Enforces customs laws and regulations to prevent import and export of prohibited or controlled goods and products. Monitors US border crossings to prevent entry of illegal immigrants, criminals, and terrorists.

*U.S. Secret Service (USSS):* Protects the President, the Vice President, dignitaries and designated individuals; investigates crimes involving U.S. currency and federal securities; investigates interstate financial and electronic crimes.

*In addition,* the deployed Judge Advocate supporting law enforcement agencies' missions should also be aware of other agencies within the "Federal law enforcement community", as compiled in 42 U.S. Code Chapter 111, Section 10501, including:

- Federal Bureau of Investigation (FBI)
- Drug Enforcement Administration (DEA)
- Department of Justice, Criminal Division
- Internal Revenue Service (IRS)
- United States Marshal's Service
- National Park Service
- United States Postal Service
- The Secret Service (USSS)
- Department of Justice (DOJ)
  - National Security Division
  - Bureau of Alcohol, Tobacco, Firearms, and Explosives

### **DEVELOPMENT OF RESTRICTIONS ON USE OF FORCE BY CIVILIAN LAW ENFORCEMENT OFFICERS.**

Prior to the U.S. Supreme Court's decision in *Tennessee vs. Garner*, most states' law and decisional authorities permitted the use of deadly force to stop the commission of a crime, stop a fleeing suspect and/or overcome resistance to arrest, without regard to the seriousness of the underlying offense or the reason for the subject's apprehension. In *Garner*, police responded to a night-time residential burglary, chasing the fleeing suspect until he was stopped by a six foot high chain-link fence. Although the officer called out "Police, halt", the suspect began to climb the fence to elude apprehension. The officer then shot and killed the unarmed teenage suspect. In the landmark decision, the Supreme Court held that:

The use of deadly force to prevent the escape of *all* felony suspects, whatever the circumstances, *is constitutionally unreasonable*. It is not better that all felony suspects die than that they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so....*A police officer may not seize an unarmed, non-dangerous suspect by shooting*

*him dead.* [Emphasis added] 471 US 1, 11.

Therefore, the use of deadly force to apprehend *all felony suspects*, without regard to the circumstances of the suspected offense or the particular attempted arrest or apprehension, is constitutionally unreasonable. However, the prohibition on use of deadly force does not apply when the arresting officer has a good-faith, reasonable belief that the suspect poses a serious threat to the safety of the arresting officer, or to others. If feasible, the apprehending officer should give a fleeing suspect a warning of his/her intent to use deadly force (e.g. “Stop or I’ll shoot”).

If, however, a *motorist* attempts to elude or escape from a pursuing officer, the officer may take whatever actions reasonably necessary to terminate the pursuit. An officer’s attempt to terminate a dangerous, high-speed car chase that threatens the lives of innocent bystanders does not violate the Fourth Amendment, even if it places the fleeing motorist at risk of serious injury or death. *Scott vs. Harris*, 127 S.Ct. 1769 (2007). See also *County of Sacramento vs. Lewis*, 523 U.S. 833, 118 S.Ct. 1708 (1998).

Ultimately, a reviewing court will apply both objective and subjective tests of reasonableness. However, “...the test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application.” See *Graham vs. Connor*, 490 U.S. 386 (1989). In assessing reasonableness, *Judge Advocates operating in an inter-agency environment should pay careful attention to the factors enunciated by the Graham v. Connor decision and other recent authorities, including :*

- Severity of the crime;
- Immediate threat to the safety of officers or civilians;
- Whether the suspect is physically resisting apprehension;
- Whether the suspect is fleeing;
- The number of suspects involved in the incident at issue;
- The number of officers involved in the incident;
- The respective age, size, and condition of the suspect(s) and officer(s);
- Duration of the incident at issue;
- Whether the force applied resulted in injury (retrospective factor only);
- Known violent history of the subject;
- Whether alcohol or drugs were involved ;
- The subject’s mental or psychiatric history, if known by the officer at the time of the incident;
- Danger to innocent bystanders;
- Availability of non-lethal means of subduing the subject; e.g. Chemical MACE, pepper spray, batons, tazers or stun-guns, handcuffs and other physical restraints.

*Note that the mental state of the officer, alone, does not necessarily establish an officer’s reasonable fear for his/her safety or the safety of others.* Although the law enforcement officer’s use of force may *seem* necessary at the time, there must be *objective factors* justifying the use. *Seldom* will a law enforcement officer’s statement, alone, justify the use of physical force, especially deadly force:

“A simple statement by an officer that he fears for his safety or the safety of others is not enough; there must be *objective factors* to justify such a concern.”

*Deorle vs. Rutherford*, 272 F. 3d 1272 (9<sup>th</sup> Cir. 2001), cert. denied, 536 U.S. 958 (2002)

There is *no legal duty for a civilian law enforcement officer to retreat* before using deadly force; indeed, a requirement to retreat “may be inconsistent with police officers’ duty to the public to pursue investigations of criminal activity.”

*Reed vs. Hoy*, 891 F2d 1421 (9<sup>th</sup> Circuit 1989); amended 909 F2d 324 (9<sup>th</sup> Circuit 1990); cert. denied 502 U.S. 1250 (1991).

The following excerpts are, with occasional variations and nuances, typical of states’ law and policy on the use of deadly force:

“A peace officer or any person he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance to the arrest.”

18 *Pennsylvania Consolidated Statutes*, section 508 (2008)

“It shall be the policy of the Department of Public Safety that deadly force shall be utilized only when other means of successfully resolving an incident cannot be safely undertaken.”

*Vermont State Police Manual*, Sec. IV, Ch. 1, Art. IV

“It shall be the policy of the Department of Safety to authorize the use of deadly force...to effect an arrest only if all other means of apprehension have been exhausted or are unavailable, and where feasible, the member has given notice of his/her identity as such and given a warning that deadly force may be used unless resistance or flight ceases...”

*Tennessee Department of Safety*, General Order 500, 31 May 2007.

“Officers are authorized to use deadly force when Necessary to defend themselves or the public from an imminent or immediate threat of death or serious physical injury....Officers shall give warning of the intent to use deadly force, if *feasible*. [Emphasis added]

*Nevada Department of Public Safety*, Policy number 6.2.002, 25 March 2005

### **HIGH SPEED VEHICLE PURSUIT**

In vehicle pursuit situations, a law enforcement officer’s decision whether to pursue a fleeing motorist at high speed, potentially endangering other innocent motorists, must balance the danger to others against the necessity to apprehend the traffic offender. *County of Sacramento vs. Lewis*, 523 U.S. 833; 118 S.Ct. 1708 (1998).

In some states, a high speed vehicle pursuit requires special reporting by the law enforcement officer(s) involved, and investigation by higher authorities:

Commonwealth of Virginia Department of State Police  
General Order (Vehicle) number 57:

“Firearms shall not be discharged at a moving vehicle unless a person in the vehicle is immediately threatening the officer or another person with deadly force *other* than the vehicle...Sworn employees will immediately inform their Supervisor under the following circumstances...The sworn employee applies force through the use of a tire deflation device...”

**WARNING SHOTS**

The military Standing Rules for Use of Force (SRUF) emphatically *prohibit* warning shots. CJCSI 3121.01B. Likewise, most civilian local, county, and state law enforcement agencies that the federal military force may be supporting prohibit their personnel from firing warning shots.

See, typically, Vermont State Patrol Rules and Regulations, Section V, Chapter 1 Force, Article I, Use of Deadly Force: “*Warning shots are not permitted under this policy.*”

However, the Department of Homeland Security *Policy on the Use of Deadly Force*, June 25, 2004, permits warning shots under limited circumstances by USSS agents exercising the agency’s executive protective responsibilities. Immigration and Customs Enforcement, Customs and Border Protection, and USCG law enforcement officers may fire warning shots as a signal to an aircraft; and by ICE, CBP, and USCG as a signal for a vessel to stop.

**Appendix 12-4: State Rules for the Use of Force Check**

- I. Format and Approval
  - A. Annex to OPLAN/OPORD
  - B. MOA/MOU
  - C. Soldier pocket card
  - D. Arming orders
  - E. Other
  - F. Approval of amendment by TAG/TF Cdr required/subordinate headquarters may Impose more restrictive RUF
  
- II. Definitions
  - A. Asset inherently/not inherently dangerous to others
  - B. Asset vital/not vital to national security
  - C. Dangerous instrument
  - D. Deadly force, non-deadly force
    - 1. Use of firearm always deadly force
    - 2. Other
  - E. Deadly weapon, non-deadly weapon
  - F. Detention
  - G. Hostile act, hostile intent, hostile force
  - H. Necessary/reasonable force
  - I. Peace officer
  - J. Physical/bodily injury

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- K. Reasonable belief
- L. Self defense
- M. Serious physical/bodily injury
- N. Terrorism

### III. Use of Force

- A. Mission and relationship of RUF to mission
- B. General duty to avoid use of force; preference for use of non-deadly force if at all
- C. General requirement for training and provision for legal protection (see Training Below)
- D. Rules for use of force applicable to both non-deadly and deadly force
  - 1. Apply/don't apply scheme of NGR 500-1, para 4-6 for SAD (must be determined IAW the law and civil and military policies of that state).
  - 2. Employ minimum force necessary/readily available, using escalating/tailored response:
    - a. request civilian peace officer to handle situation
    - b. verbal persuasion/order/warning
    - c. display/use of non-lethal weapon
    - d. display of lethal weapon
    - e. verbal warning for use of lethal weapon
    - f. warning shots allow/not allowed
    - g. use of weapon to injure/stop
    - h. use of weapon to kill
  - 3. Use force options in FM 19-15 and NG Civil Disturbance Handbook as a guide
  - 4. Self Defense using deadly/non-deadly weapon(s) always available (see Self Defense below)
  - 5. Allow surrender, treat humanly, respect private property
- E. Situations requiring/allowing use of force
  - 1. Self defense (see Self Defense below)
  - 2. Mission accomplishment
    - a. Apprehension/detention
    - b. Search, seizure
    - c. Civil disturbance
    - d. Crowd control
    - e. Enforcement of orders of civil authorities
    - f. Detaining
    - g. Apprehending
    - h. Prevent escape of detained or apprehended person
    - i. Pursuit of suspect of crime
    - j. Defense of occupied/unoccupied property
    - k. Prevent specified/unspecified offenses at specified/unspecified times/places
    - l. Specified THREATCON levels (see THREATCON RUF below)
    - m. At direction/request of CLEO
- F. Non-deadly force
  - 1. Use of force authorized/authorized for specific purposes (e.g., apprehension, detention, protection of occupied/unoccupied property)/unauthorized
  - 2. Specific weapons/devices authorized
    - a. Pepper spray, RCA
    - b. Flex cuffs
    - c. Baton
    - d. Other (see Weapons below)
- G. Deadly force
  - 1. General conditions for employment
    - a. Non-deadly force exhausted or self defense requires
    - b. Authorized/authorized for specified purposes (e.g., apprehension, detention, protection of occupied/unoccupied property)/unauthorized
    - c. No danger to others
    - d. Warning required if possible

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- e. Warning shots authorized/unauthorized
- 2. Other considerations
  - a. Situs of defender (e.g., residence of person employing force)
  - b. Any conditions for use of particular weapon satisfied (e.g. use of lock plates on M16)
  - c. Status of person employing force
    - (1) armed citizen
    - (2) peace officer
    - (3) armed citizen at direction of/authorization by peace officer/other official
  - d. reasonable belief of person employing force
  - e. assistance to victim(s), Call 911, etc.
  - f. If mission cannot be accomplished without use of deadly force and deadly force not permitted, mission must be changed or delayed (assuming RUF not amended) until sufficient non-deadly force arrives to accomplish the mission.
  - g. Report use of force/discharge of firearm/violations of RUF through chain of command
  - h. Pneumonic devices:
    - (1) R-A-M-P
    - (2) C-P-A
    - (3) L-I-D
    - (4) W-O-C-S

### IV. Self Defense

- A. Defense of Self
- B. Defense of others
- C. Defense of occupied property
- D. Conditions for employment
  - 1. Response to hostile act, hostile intent
  - 2. Use minimum force necessary/available (see Use of Force above)
  - 3. Retreat doctrine v. right to position defense
    - a. Situs of defender (e.g., defender's home)
    - b. Status of defender (same as Use of Force E1e above)
    - c. Reasonable belief of defender
  - 4. Response must be proportional in degree, intensity, and duration
  - 5. Searches for protection of force or incident to lawful apprehension

### V. Powers of Peace Officer

- D. Statutory or other bases
- E. Use of Force
- F. Apprehension/Detention
- G. Search and seizure

### VI. Apprehension/Detention

- A. Clarification of military vs. civilian terms
  - 1. Arrest
  - 2. Apprehension
- B. Detention
- C. Authorized/authorized under stated conditions/unauthorized
- D. Probable cause
- E. Use of force/resisting arrest
- F. Pursuit of suspects, hot pursuit
- G. Reliance on civilian law enforcement (see Civilian Law Enforcement below)
- H. Treatment of persons apprehended/arrested, or detained
- I. Use of flex cuffs (allowed/allowed under specified conditions/not allowed)
- J. Completion of apprehension/arrest or detention record (DA Form 3316-R)
- K. NG forces may/may under specified conditions/may not conduct interrogations (Art. 31 rights would apply)

## APPENDIX 12: RUF STATE FORCES

- L. NG forces may/may under specified circumstances/may not advise individuals of Miranda/Art. 31 rights

### VII. Search and Seizure

- A. Search (including/excluding stop and frisk)
- B. Seizure
- C. Authorized/authorized under specified conditions/not authorized
  - 1. Persons/property
  - 2. Purpose
    - a. Mission accomplishment
    - b. Self defense (see Self Defense above)
  - 3. Probable cause, reasonable suspicion
  - 4. Bases of execution
    - a. Search (no warrant issued)
      - (1) consent
      - (2) incident to lawful apprehension/arrest or detention
      - (3) exigent circumstances
      - (4) probable cause (e.g., plain view)
    - b. Seizure (no warrant issued)
      - (1) consent
      - (2) safety of force
      - (3) evidence of an offense
  - 5. Method of execution
    - a. Special use area
    - b. Pat downs of female suspects
  - 6. Role of/Reliance on civilian authorities (see Civilian Law Enforcement below)
  - 7. Safe keeping of/account for seized property (DA 3316-R)
  - 8. Use of force (see Use of Force above)
  - 9. Notification to civilian law enforcement

### VIII. Weapons

- A. Type
  - 1. Usually allowed
    - a. Rifle
    - b. Pistol
    - c. Bayonet
    - d. Baton
    - e. Pepper spray
  - 2. Allowed only in limited circumstances
    - a. Working dogs
    - b. High pressure water
    - c. M203
    - d. RCAs
    - e. Crew served
  - 3. Usually not allowed
    - a. Privately owned
- B. Conditions for Use
  - 1. Secure storage required
  - 2. Use of force (see Use of Force above)
  - 3. Use only in approved manner (e.g., use of M16 only with lock plate)
  - 4. Tactical control of increasingly deadlier force by NCO or officer
  - 5. Firearms not to be fired from moving vehicles (self defense exception)
  - 6. Discharge of firearm report required
- C. Arming orders
  - 1. Use chart/matrix
  - 2. Use numbered levels

## APPENDIX 12: RUF STATE FORCES

3. To be used/not used sequentially
  4. Soldier card
- IX. THREATCON RUF
- A. THREATCON levels
  - B. RUF for each THREATCON level
  - C. THREATCON Arming orders
  - D. Role of Cdr
- X. Training
- A. Subjects
    1. Mission
    2. Method of execution
    3. Use of force
      - a. General principles
      - b. Self defense
      - c. Mission accomplishment
    4. Apprehension/arrest or detention
    5. Search and seizure
    6. Use of pneumonic device (see Use of Force above)
    7. Use of arming order
    8. Legal authority/protection
      - a. Civil liability
      - b. Criminal liability
    9. Use of protective equipment
    10. Use only approved method of employment of weapons/equipment
    11. Civilian law enforcement
    12. Weapons qualification
  - B. Method
    1. Briefing/hand outs
    2. Vignettes
    3. Pneumonic devices (see Use of Force above)
    4. Testing
  - C. Soldier acknowledges receipt of training
- XI. Command/Commander Responsibility
- A. Exercise Close supervision over operations involving use of force
    1. Lautenberg compliance
    2. Security clearance requirements
    3. Safe storage of weapons
    4. Tactical control/direction at point of mission execution
  - B. Training in use of force, weapons, and equipment (see Training above)
  - C. Direct control of NG forces is/is not given to civilian law enforcement
- XII. Civilian Law Enforcement
- A. Role, location, contacting, relationship with
  - B. NG forces are/are not under direct control of civilian authorities
  - C. Use/reliance on for specified purposes
    1. Apprehension/arrest or detention
    2. Search
    3. Seizure
    4. Operation of detention facility
- XIII. Special Orders/General Orders/Coordinating Instructions
- A. Maintain professional appearance and bearing at all times

## APPENDIX 12: RUF STATE FORCES

- B. Treat all civilians respectfully
- C. Do not discuss operations outside military chain of command
- D. Report accidents and injuries through chain of command
- E. Code of ethics (Do's and don'ts less than RUF while performing duty)
- F. Issuance and accountability of weapons, ammunition, and other equipment
- G. Method/place of deployment at airport
- H. Applicability of state UCMJ
- I. General characteristics of a terrorist

### XIV. Contact With Media Personnel

- A. You may/may not respond to request from the media for interviews or statements.
- B. Refer questions on Army/National Guard policy to military Public Affairs Officer
- C. Do not unnecessarily impede freedom of movement of properly identified media personnel