

**APPENDIX 5
CIVIL DISTURBANCE OPERATIONS**

APPENDIX 5-1: 10 U.S.C. §§ 331-335 - THE INSURRECTION ACT

10 USC CHAPTER 15 - 01/05/99
TITLE 10 - ARMED FORCES
Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15 - INSURRECTION

CHAPTER REFERRED TO IN OTHER SECTIONS
This chapter is referred to in sections 101, 115 of this title; title 38 section 4312.

10 USC Sec. 331 01/05/99

TITLE 10 - ARMED FORCES

Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15 - INSURRECTION

Sec. 331. Federal aid for State governments

Whenever there is an insurrection in any State against its government, the President may, upon the request of its legislature or of its governor if the legislature cannot be convened, call into Federal service such of the militia of the other States, in the number requested by that State, and use such of the armed forces, as he considers necessary to suppress the insurrection.

CROSS REFERENCES

Army National Guard in Federal service, call, see section 12406 of this title.

Use of Army and Air Force as posse comitatus, see section 1385 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

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10 USC Sec. 332 01/05/99

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15 - INSURRECTION

Sec. 332. Use of militia and armed forces to enforce Federal authority

Whenever the President considers that unlawful obstructions, combinations, or assemblages, or rebellion against the authority of the United States, make it impracticable to enforce the laws of the United States in any State or Territory by the ordinary course of judicial proceedings, he may call into Federal service such of the militia of any State, and use such of the armed forces, as he considers necessary to enforce those laws or to suppress the rebellion.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

10 USC Sec. 333 01/05/99

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15 - INSURRECTION

Sec. 333. Interference with State and Federal law

The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy, if it -

(1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect

that right, privilege, or immunity, or to give that protection; or

(2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws.

In any situation covered by clause (1), the State shall be considered to have denied the equal protection of the laws secured by the Constitution.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 5 section 6323.

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10 USC Sec. 334 01/05/99

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 15 - INSURRECTION

Sec. 334. Proclamation to disperse

Whenever the President considers it necessary to use the militia or the armed forces under this chapter, he shall, by proclamation, immediately order the insurgents to disperse and retire peaceably to their abodes within a limited time.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2662 of this title.

10 USC Sec. 335 01/26/98

TITLE 10 - ARMED FORCES
Subtitle A - General Military Law

PART I - ORGANIZATION AND GENERAL MILITARY POWERS

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Sec. 335. Guam and Virgin Islands included as "State" For purposes of this chapter, the term "State" includes the unincorporated territories of Guam and the Virgin Islands.

SOURCE (Added Pub. L. 90-497, Sec. 11, Sept. 11, 1968, 82 Stat. 847; amended Pub. L. 96-513, title V, Sec. 511(11)(A), Dec. 12, 1980, 94 Stat. 2920.)

APPENDIX 5-2: 10 U.S.C. § 2667 - Leases: Non-Excess Property of Military Departments

TITLE 10--ARMED FORCES

Subtitle A--General Military Law

PART IV--SERVICE, SUPPLY, AND PROCUREMENT

CHAPTER 159--REAL PROPERTY; RELATED PERSONAL PROPERTY; AND LEASE OF NON-EXCESS PROPERTY

SEC. 2667. LEASES: NON-EXCESS PROPERTY OF MILITARY DEPARTMENTS

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(a) Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he considers will promote the national defense or be in the public interest, real or personal property that is--

(1) under the control of that department;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) A lease under subsection (a)-

(1) may not be for more than five years, unless the Secretary concerned determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;

(3) shall permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest;

(4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and

(5) may provide, notwithstanding section 321 of the Act of June 30, 1932 (40 U.S.C. 303b), or any other provision of law, for the improvement, maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as the payment of part or all of the consideration for the lease.

(c) This section does not apply to oil, mineral, or phosphate lands.

(d)(1)(A) All money rentals received pursuant to leases entered into by the Secretary of a military department under this section shall be deposited in a special account in the Treasury established for such military department, except--

(i) amounts paid for utilities and services furnished lessees by the Secretary; and

(ii) money rentals referred to in paragraph (4) or (5).

(B) Sums deposited in a military department's special account pursuant to subparagraph (A) shall be available to such military department, as provided in appropriation Acts, as follows:

(i) 50 percent of such amount shall be available for facility maintenance and repair or environmental restoration at the military installation where the leased property is located.

(ii) 50 percent of such amount shall be available for facility maintenance and repair and for environmental restoration by the military department concerned.

(2) Payments for utilities and services furnished lessees pursuant to leases entered into under this section shall be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

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(3) As part of the request for authorizations of appropriations submitted to the Committee on Armed Services of the Senate and the Committee on National Security of the House of Representatives for each fiscal year, the Secretary of Defense shall include--

(A) an accounting of the receipt and use of all money rentals that were deposited and expended under this subsection during the fiscal year preceding the fiscal year in which the request is made; and

(B) a detailed explanation of each lease entered into, and of each amendment made to existing leases, during such preceding fiscal year.

(4) Money rentals received by the United States directly from a lease under this section for agricultural or grazing purposes of lands under the control of the Secretary of a military department (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(5) Money rentals received by the United States from a lease under subsection (f) shall be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(e) The interest of a lessee of property leased under this section may be taxed by State or local governments. A lease under this section shall provide that, if and to the extent that the leased property is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

(f)(1) Notwithstanding subsection (a)(3), pending the final disposition of real property and personal property located at a military installation to be closed or realigned under a base closure law, the Secretary of the military department concerned may lease the property to any individual or entity under this subsection if the Secretary determines that such a lease would facilitate State or local economic adjustment efforts.

(2) Notwithstanding subsection (b)(4), the Secretary concerned may accept consideration in an amount that is less than the fair market value of the lease interest if the Secretary concerned determines that--

(A) a public interest will be served as a result of the lease; and

(B) the fair market value of the lease is (i) unobtainable, or (ii) not compatible with such public benefit.

(3) Before entering into any lease under this subsection, the Secretary shall consult with the Administrator of the Environmental Protection Agency in order to determine whether the environmental condition of the property proposed for leasing is such that the lease of the property is advisable. The Secretary and the Administrator shall enter into a memorandum of understanding setting forth procedures for carrying out the determinations under this paragraph.

(4) The Secretary concerned may accept under subsection (b)(5) services of a lessee for an entire installation to be closed or realigned under a base closure law, or for any part of such installation, without regard to the requirement in subsection (b)(5) that a substantial part of the installation be leased.

(5)(A) Notwithstanding the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.), the scope of any environmental impact analysis necessary to support an interim lease of property under this subsection shall be limited to the environmental consequences of activities authorized under the proposed

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lease and the cumulative impacts of other past, present, and reasonably foreseeable future actions during the period of the proposed lease.

(B) Interim leases entered into under this subsection shall be deemed not to prejudice the final disposal decision with respect to the property, even if final disposal of the property is delayed until completion of the term of the interim lease. An interim lease under this subsection shall not be entered into without prior consultation with the redevelopment authority concerned.

(C) Subparagraphs (A) and (B) shall not apply to an interim lease under this subsection if authorized activities under the lease would--

(i) significantly affect the quality of the human environment; or

(ii) irreversibly alter the environment in a way that would preclude any reasonable disposal alternative of the property concerned.

(g)(1) If a proposed lease under subsection (a) involves only personal property, the lease term exceeds one year, and the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary concerned, the Secretary shall use competitive procedures to select the lessee.

(2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary concerned shall submit to Congress written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.

(h) In this section, the term "base closure law" means each of the following:

(1) The Defense Base Closure and Realignment Act of 1990 (part A of title XXIX of Public Law 101-510; 10 U.S.C. 2687 note).

(2) Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Public Law 100-526; 10 U.S.C. 2687 note).

(3) Section 2687 of this title.

(Aug. 10, 1956, ch. 1041, 70A Stat. 150; Oct. 7, 1975, Pub. L. 94-107, title VI, Sec. 607(7), 89 Stat. 566; Sept. 14, 1976, Pub. L. 94-412, title V, Sec. 501(b), 90 Stat. 1258; Dec. 12, 1980, Pub. L. 96-513, title V, Sec. 511(92), 94 Stat. 2928; Oct. 12, 1982, Pub. L. 97-295, Sec. 1(34), 96 Stat. 1296; Oct. 15, 1982, Pub. L. 97-321, title VIII, Sec. 803, 96 Stat. 1572; Nov. 5, 1990, Pub. L. 101-510, div. B, title XXVIII, Sec. 2806, 104 Stat. 1787; Dec. 5, 1991, Pub. L. 102-190, div. B, title XXVIII, Sec. 2862, 105 Stat. 1559; Oct. 23, 1992, Pub. L. 102-484, div. B, title XXVIII, Sec. 2851, 106 Stat. 2625; Nov. 30, 1993, Pub. L. 103-160, div. B, title XXIX, Sec. 2906, 107 Stat. 1920; Feb. 10, 1996, Pub. L. 104-106, div. B, title XXVIII, Sec. 2831, 110 Stat. 558; Feb. 10, 1996, Pub. L. 104-106, div. B, title XXVIII, Sec. 2832, 110 Stat. 559; Feb. 10, 1996, Pub. L. 104-106, div. B, title XXVIII, Sec. 2833, 110 Stat. 559.)

Historical and Revision Notes

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2667(a)	5:626s-3 (1st sentence). 10:1270 (1st sentence).	Aug. 5, 1947, ch. 493, Secs. 1, 6, 61 Stat. 774, 775; Sept. 28, 1951, ch. 434, Sec. 605 (as

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2667(b)	34:522a (1st sentence). 5:626s-3 (2d through 6th sentences). 10:1270 (2d through 6th sentences). 34:522a (2d through 6th sentences).	applicable to Act of Aug. 5, 1947, ch. 493, Sec. 1), 65 Stat. 366.
2667(c)	5:626s-3 (last sentence). 10:1270 (last sentence). 34:522a (last sentence).	
2667(d)	5:626s-3 (less 1st 6 sentences). 10:1270 (less 1st 6 sentences). 34:522a (less 1st 6 sentences).	
2667(e)	5:626s-6. 10:1270d. 34:522e.	

In subsection (a), the words "considers * * * United States" are substituted for the words "shall deem * * * Government". The words "and conditions" are omitted as surplusage. The words "he considers" are substituted for the words "in his judgment".

In subsection (a)(3), the words "excess property, as defined by section 472 of title 40" are substituted for the words "surplus to the needs of the Department within the meaning of the Surplus Property Act of 1944 [Act of October 3, 1944 (58 Stat. 765)]", in 5:626s-3, 10:1270, and 34:522a, since the words "excess property" are so defined by the Federal Property and Administrative Services Act of 1949.

In subsection (b)(2), the words "may give" are substituted for the first 12 words of the third sentence of 5:626s-3, 10:1270, and 34:522a.

The words "if the lease is revoked to allow the United States to sell the property" are substituted for the words "in the event of the revocation of the lease in order to permit sale thereof by the Government". The words "under any other provision of law" are inserted for clarity. The words "the first right to buy" are substituted for the words "a right of first refusal". The words "but this section shall not be construed as authorizing the sale of any property unless the sale thereof is otherwise authorized by law" are omitted as surplusage, since the revised section deals only with leases of property.

In subsection (b)(3), the words "must permit" are substituted for the words "Each such lease shall contain a provision permitting". The words "from the lease" are omitted as surplusage.

In subsection (b)(5), the words "any such lease" and "of such property" are omitted as surplusage.

In subsection (c), the words "This section does" are substituted for the words "The authority herein granted shall".

In subsection (e), the words "of property" are inserted for clarity. The words "leased under" are substituted for the words "made or created pursuant to". The words "may be taxed by State or local governments" are substituted for the words "shall be made subject to State or local taxation". The last sentence is substituted for the last sentence of 5:626s-6, 10:1270d, and 34:522e.

Amendments

1993-Subsec. (f). Pub. L. 103-160, Sec. 2906(a), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows:

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Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if--

(1) the Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and

(2) the Administrator of General Services concurs in the action."

Subsec. (g). Pub. L. 103-160, Sec. 2906(b), added subsec. (g).

1992-Subsec. (b)(4). Pub. L. 102-484 inserted `, in the case of the lease of real property," after `shall provide".

1991-Subsec. (b)(3). Pub. L. 102-190, Sec. 2862(a)(1), substituted `shall permit" for `must permit" and struck out `and" at end.

Subsec. (b)(4). Pub. L. 102-190, Sec. 2862(a)(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (b)(5). Pub. L. 102-190, Sec. 2862(a)(2), (4), redesignated par. (4) as (5) and inserted `improvement," before `maintenance" and `the payment of" before `part or all".

Subsec. (d)(3). Pub. L. 102-190, Sec. 2862(b), redesignated subpar. (B) as par. (3), substituted `As part of the request for authorizations of appropriations submitted to the Committees on Armed Services of the Senate and House of Representatives for each fiscal year" for `As part of the request for authorizations of appropriations to such Committees for each fiscal year after fiscal year 1992", redesignated cls. (i) and (ii) as subpars. (A) and (B), respectively, and struck out former subpar. (A) which read as follows: `As part of the request for authorizations of appropriations for fiscal year 1992 to the Committees on Armed Services of the Senate and of the House of Representatives, the Secretary of Defense shall include an explanation of each lease from which money rentals will be received and deposited under this subsection during fiscal year 1991, together with an estimate of the amount to be received from each such lease and an explanation of the anticipated expenditures of such receipts."

1990-Subsec. (d). Pub. L. 101-510 added pars. (1) to (3), redesignated former par. (2) as (4), and struck out former par. (1) which read as follows: `Except as provided in paragraph (2), money rentals received by the United States directly from a lease under this section shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid."

1982-Subsec. (b)(4). Pub. L. 97-295 substituted `of" for `entitled `An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved" after `section 321 of the Act".

Subsec. (d). Pub. L. 97-321 designated existing provisions as par. (1), substituted `Except as provided in paragraph (2), money" for `Money", and added par. (2).

1980-Subsec. (a)(3). Pub. L. 96-513, Sec. 511(92)(A), substituted `section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472)" for `section 472 of title 40".

Subsec. (b)(4). Pub. L. 96-513, Sec. 511(92)(B), substituted `section 321 of the Act entitled `An act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes', approved June 30, 1932 (40 U.S.C. 303b)," for `section 303b of title 40".

Subsec. (e). Pub. L. 96-513, Sec. 511(92)(C), substituted `Act" for `act".

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Subsec. (f). Pub. L. 96-513, Sec. 511(92)(D), substituted ``the Secretary" for ``The Secretary", and substituted ``the Administrator of General Services" for ``The Administrator of the General Services Administration".

1976-Subsec. (b)(4), (5). Pub. L. 94-412 struck out par. (4) which required leases of nonexcess property of a military department include a provision making the lease revocable during a national emergency declared by the President, and redesignated par. (5) as (4).

1975-Subsec. (f). Pub. L. 94-107 added subsec. (f).

Change of Name

Committee on Armed Services of House of Representatives changed to Committee on National Security of House of Representatives by House Resolution No. 6, One Hundred Fourth Congress, Jan. 4, 1995.

Effective Date of 1980 Amendment

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

Savings Provision

Amendment by Pub. L. 94-412 not to affect any action taken or proceeding pending at the time of amendment, see section 501(h) of Pub. L. 94-412, set out as a note under section 1601 of Title 50, War and National Defense.

Leasing of Defense Property; Notification of Congress; Waiver; Report to Congress; Definition

Pub. L. 96-533, title I, Sec. 109(a)-(e), Dec. 16, 1980, 94 Stat. 3137, which provided that before the Secretary of a military department exercised his authority under section 2667 of title 10, United States Code, in order to lease defense property to a foreign government for a period of more than six months, the President had to transmit to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate, a written notification of the particulars of the proposed lease, was repealed by Pub. L. 97-113, title I, Sec. 109(d)(1), Dec. 29, 1981, 95 Stat. 1526. See section 2795 et seq. of Title 22, Foreign Relations and Intercourse.

Section Referred to in Other Sections

This section is referred to in title 16 section 670a; title 22 section 2796.

SEC. 2667a. Leases: non-excess property of Defense Agencies

(a) LEASE AUTHORITY.—Whenever the Secretary of Defense considers it advantageous to the United States, the Secretary may lease to such lessee and upon such terms as the Secretary considers will promote the national defense or to be in the public interest, personal property that is—

(1) under the control of a Defense Agency;

(2) not for the time needed for public use; and

(3) not excess property, as defined by section 3 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 472).

(b) LIMITATION, TERMS, AND CONDITIONS.—A lease under subsection (a)—

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- (1) may not be for more than five years unless the Secretary of Defense determines that a lease for a longer period will promote the national defense or be in the public interest;
 - (2) may give the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law;
 - (3) shall permit the Secretary to revoke the lease at any time, unless the Secretary determines that the omission of such a provision will promote the national defense or be in the public interest;
 - (4) shall provide for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the fair market value of the lease interest, as determined by the Secretary; and
 - (5) may provide, notwithstanding any other provision of law, for the improvement, maintenance, protection, repair, restoration, or replacement by the lessee, of the property leased as the payment of part or all of the consideration for the lease.
- (c) **COMPETITIVE SELECTION.**—(1) If the term of a proposed lease under subsection (a) exceeds one year and the fair market value of the lease interest exceeds \$100,000, as determined by the Secretary of Defense, the Secretary shall use competitive procedures to select the lessee.
- (2) Not later than 45 days before entering into a lease described in paragraph (1), the Secretary shall submit to Congress a written notice describing the terms of the proposed lease and the competitive procedures used to select the lessee.
- (d) **DISPOSITION OF MONEY RENT.**—Money rentals received pursuant to a lease entered into by the Secretary of Defense under subsection (a) shall be deposited in a special account in the Treasury established for the Defense Agency whose property is subject to the lease. Amounts in a Defense Agency's special account shall be available, to the extent provided in appropriations Acts, solely for the maintenance, repair, restoration, or replacement of the leased property.

APPENDIX 5-3: 18 U.S.C. § 231 - Civil Disorders

Sec. 231. - Civil disorders

(a)

- (1) Whoever teaches or demonstrates to any other person the use, application, or making of any firearm or explosive or incendiary device, or technique capable of causing injury or death to persons, knowing or having reason to know or intending that the same will be unlawfully employed for use in, or in furtherance of, a civil disorder which may in any way or degree obstruct, delay, or adversely affect commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function; or
- (2) Whoever transports or manufactures for transportation in commerce any firearm, or explosive or incendiary device, knowing or having reason to know or intending that the same will be used unlawfully in furtherance of a civil disorder; or
- (3) Whoever commits or attempts to commit any act to obstruct, impede, or interfere with any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function –

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Shall be fined under this title or imprisoned not more than five years, or both.

(b) Nothing contained in this section shall make unlawful any act of any law enforcement officer which is performed in the lawful performance of his official duties

APPENDIX 5-4: 18 U.S.C. § 1382 - Entering Military, Naval, or Coast Guard Property

Sec. 1382. - Entering military, naval, or Coast Guard property

Whoever, within the jurisdiction of the United States, goes upon any military, naval, or Coast Guard reservation, post, fort, arsenal, yard, station, or installation, for any purpose prohibited by law or lawful regulation; or

Whoever reenters or is found within any such reservation, post, fort, arsenal, yard, station, or installation, after having been removed therefrom or ordered not to reenter by any officer or person in command or charge thereof -

Shall be fined under this title or imprisoned not more than six months, or both

APPENDIX 5-5: 28 U.S.C. § 1346, 2671-2680 - Federal Tort Claims Act

28 U.S.C. §1346, 2002
United States as Defendant

Sec. 1346. United States as defendant

(a) The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of:

(1) Any civil action against the United States for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, or any penalty claimed to have been collected without authority or any sum alleged to have been excessive or in any manner wrongfully collected under the internal-revenue laws;

(2) Any other civil action or claim against the United States, not exceeding \$10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort, except that the district courts shall not have jurisdiction of any civil action or claim against the United States founded upon any express or implied contract with the United States or for liquidated or unliquidated damages in cases not sounding in tort which are subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978. For the purpose of this paragraph, an express or implied contract with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration shall be considered an express or implied contract with the United States.

(b)(1) Subject to the provisions of chapter 171 of this title, the district courts, together with the United States District Court for the District of the Canal Zone and the District Court of the Virgin Islands, shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages, accruing on and after January 1, 1945, for injury or loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

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(2) No person convicted of a felony who is incarcerated while awaiting sentencing or while serving a sentence may bring a civil action against the United States or an agency, officer, or employee of the Government, for mental or emotional injury suffered while in custody without a prior showing of physical injury.

(c) The jurisdiction conferred by this section includes jurisdiction of any set-off, counterclaim, or other claim or demand whatever on the part of the United States against any plaintiff commencing an action under this section.

(d) The district courts shall not have jurisdiction under this section of any civil action or claim for a pension.

(e) The district courts shall have original jurisdiction of any civil action against the United States provided in section 6226, 6228(a), 7426, or 7428 (in the case of the United States district court for the District of Columbia) or section 7429 of the Internal Revenue Code of 1986.

(f) The district courts shall have exclusive original jurisdiction of civil actions under section 2409a to quiet title to an estate or interest in real property in which an interest is claimed by the United States.

(g) Subject to the provisions of chapter 179, the district courts of the United States shall have exclusive jurisdiction over any civil action commenced under section 453(2) of title 3, by a covered employee under chapter 5 of such title.

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SOURCE

(June 25, 1948, ch. 646, 62 Stat. 933; Apr. 25, 1949, ch. 92, Sec. 2(a), 63 Stat. 62; May 24, 1949, ch. 139, Sec. 80(a), (b), 63 Stat. 101; Oct. 31, 1951, ch. 655, Sec. 50(b), 65 Stat. 727; July 30, 1954, ch. 648, Sec. 1, 68 Stat. 589; Pub. L. 85-508, Sec. 12(e), July 7, 1958, 72 Stat. 348; Pub. L. 88-519, Aug. 30, 1964, 78 Stat. 699; Pub. L. 89-719, title II, Sec. 202(a), Nov. 2, 1966, 80 Stat. 1148; Pub. L. 91-350, Sec. 1(a), July 23, 1970, 84 Stat. 449; Pub. L. 92-562, Sec. 1, Oct. 25, 1972, 86 Stat. 1176; Pub. L. 94-455, title XII, Sec. 1204(c)(1), title XIII, Sec. 1306(b)(7), Oct. 4, 1976, 90 Stat. 1697, 1719; Pub. L. 95-563, Sec. 14(a), Nov. 1, 1978, 92 Stat. 2389; Pub. L. 97-164, title I, Sec. 129, Apr. 2, 1982, 96 Stat. 39; Pub. L. 97-248, title IV, Sec. 402(c)(17), Sept. 3, 1982, 96 Stat. 669; Pub. L. 99-514, Sec. 2, Oct. 22, 1986, 100 Stat. 2095; Pub. L. 102-572, title IX, Sec. 902(b)(1), Oct. 29, 1992, 106 Stat. 4516; Pub. L. 104-134, title I, Sec. 101((a)) (title VIII, Sec. 806), Apr. 26, 1996, 110 Stat. 1321, 1321-75; renumbered title I, Pub. L. 104-140, Sec. 1(a), May 2, 1996, 110 Stat. 1327; Pub. L. 104-331, Sec. 3(b)(1), Oct. 26, 1996, 110 Stat. 4069.)

HISTORICAL AND REVISION NOTES

1948 ACT

Based on title 28, U.S.C., 1940 ed., Sec. 41(20), 931(a), 932 (Mar. 3, 1911, ch. 231, Sec. 24, par. 20, 36 Stat. 1093; Nov. 23,

1921, ch. 136, Sec. 1310(c), 42 Stat. 311; June 2, 1924, ch. 234, Sec. 1025(c), 43 Stat. 348; Feb. 24, 1925, ch. 309, 43 Stat. 972; Feb. 26, 1926, ch. 27, Sec. 1122(c), 1200, 44 Stat. 121, 125; Aug. 2, 1946, ch. 753, Sec. 410(a), 411, 60 Stat. 843).

Section consolidates provisions of section 41(20) conferring jurisdiction upon the district court, in civil actions against the United States, with the first sentence of section 931(a) relating to jurisdiction of the district courts in tort claims cases, and those provisions of section 932 making the provisions of said section 41(20), relating to counterclaim and set-off, applicable to tort claims cases, all of title 28, U.S.C., 1940 ed.

Provision in section 931(a) of title 28, U.S.C., 1940 ed., for trials without a jury, is incorporated in section 2402 of this revised title. For other provisions thereof, see Distribution Table.

Words "commencing an action under this section" in subsec. (c) of this revised section cover the provision in section 932 of title 28, U.S.C., 1940 ed., requiring that the same provisions "for counterclaim and set-off" shall apply to tort claims cases brought in the district courts.

The phrase in section 931(a) of title 28, U.S.C., 1940 ed., "accruing on and after January 1, 1945" was omitted because

executed as of the date of the enactment of this revised title. Provisions in section 41(20) of title 28, U.S.C., 1940 ed., relating to time for commencing action against United States and jury trial constitute sections 2401 and 2402 of this title. (See reviser's notes under said sections.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., "commenced after passage of the Revenue Act of 1921" were not

included in revised subsection (a)(1) because obsolete and superfluous. Actions under this section involving erroneous or

illegal assessments by the collector of taxes would be barred unless filed within the 5-year limitation period of section 1113(a) of the Revenue Act of 1926, 44 Stat. 9, 116. (See *United States v. A. S. Kreider Co.*, 1941, 61 S.Ct. 1007, 313 U.S. 443, 85 L.Ed. 1447.)

Words in section 41(20) of title 28, U.S.C., 1940 ed., "if the collector of internal revenue is dead or is not in office at the

time such action or proceeding is commenced" were omitted. The revised section retains the language of section 41(20) of

title 28, U.S.C., 1940 ed., with respect to actions against the United States if the collector is dead or not in office when action is commenced, and consequently maintains the long existing distinctions in practice between actions against the United States and actions against the collector who made the assessment or collection. In the latter class of actions either party may demand a jury trial while jury trial is denied in actions against the United States. See section 2402 of this title. In reality all such actions are against the United States and not against local collectors. (See *Lowe v. United States*, 1938, 58 S.Ct. 896, 304 U.S. 302, 82 L.Ed. 1362; *Manseau v. United States*, D.C.Mich. 1943, 52 F.Supp. 395, and *Combined Metals Reduction Co. v. United States*, D.C.Utah 1943, 53 F.Supp. 739.)

The revised subsection (c)(1) omitted clause: "but no suit pending on the 27th day of June 1898 shall abate or be

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affected by this provision," contained in section 41(20) of title 28, U.S.C., 1940 ed., as obsolete and superfluous. The words contained in section 41(20) of title 28, U.S.C., 1940 ed., "claims growing out of the Civil War, and commonly known as 'war-claims,' or to hear and determine other claims which had been reported adversely prior to the 3d day of March 1887 by any court, department, or commission authorized to have and determine the same," were omitted for the same reason.

The words "in a civil action or in admiralty," in subsection (a)(2), were substituted for "either in a court of law, equity, or admiralty" to conform to Rule 2 of the Federal Rules of Civil Procedure.

Words in section 41(20) "in respect to which claims the party would be entitled to redress against the United States, either in a court of law, equity, or admiralty, if the United States were suable" were omitted from subsection (a)(2) of this revised section as unnecessary. See reviser's note under section 1491 of this title.

For jurisdiction of The Tax Court to review claims for refunds of processing taxes collected under the unconstitutional Agriculture Adjustment Act, see sections 644-659 of title 7, U.S.C., 1940 ed., Agriculture, and the 1942 Revenue Act, Act Oct. 21, 1942, ch. 610, title V, Sec. 510(a), (c), (d), 56 Stat. 667. (See, also, *Lamborn v. United States*, C.C.P.A. 1939, 104 F.2d 75, certiorari denied 60 S.Ct. 115, 308 U.S. 589, 84 L.Ed. 493.) See, also, reviser's note under section 1491 of this title as to jurisdiction of the Court of Claims in suits against the United States generally. For venue of actions under this section, see section 1402 of this title and reviser's note thereunder. Minor changes were made in phraseology.

SENATE REVISION AMENDMENT

The provision of title 28, U.S.C., Sec. 932, which related to application of the Federal Rules of Civil Procedure, were originally set out in section 2676 of this revised title, but such section 2676 was eliminated by Senate amendment. See 80th Congress Senate Report No. 1559, amendment No. 61.

1949 ACT

This section corrects typographical errors in section 1346(a)(1) of title 28, U.S.C., and in section 1346(b) of such title.

REFERENCES IN TEXT

The internal-revenue laws, referred to in subsec. (a)(1), are classified generally to Title 26, Internal Revenue Code. Sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978, referred to in subsec. (a)(2), are classified to sections 607(g)(1) and 609(a)(1) of Title 41, Public Contracts. Sections 6226, 6228(a), 7426, 7428, and 7429 of the Internal Revenue Code of 1986, referred to in subsec. (e), are classified to sections 6226, 6228(a), 7426, 7428, and 7429, respectively, of Title 26, Internal Revenue Code.

AMENDMENTS

1996 - Subsec. (b). Pub. L. 104-134 designated existing provisions as par. (1) and added par. (2). Subsec. (g). Pub. L. 104-331 added subsec. (g).

1992 - Subsec. (a). Pub. L. 102-572 substituted "United States Court of Federal Claims" for "United States Claims Court".

1986 - Subsec. (e). Pub. L. 99-514 substituted "Internal Revenue Code of 1986" for "Internal Revenue Code of 1954".

1982 - Subsec. (a). Pub. L. 97-164 substituted "United States Claims Court" for "Court of Claims". Subsec. (e). Pub. L. 97-248 substituted "section 6226, 6228(a), 7426, or" for "section 7426 or section".

1978 - Subsec. (a)(2). Pub. L. 95-563 excluded from the jurisdiction of district courts civil actions or claims against the United States founded upon any express or implied contract with the United States or for damages in cases not sounding in tort subject to sections 8(g)(1) and 10(a)(1) of the Contract Disputes Act of 1978.

1976 - Subsec. (e). Pub. L. 94-455 inserted "or section 7429" and "or section 7428 (in the case of the United States district court for the District of Columbia)", after "section 7426".

1972 - Subsec. (f). Pub. L. 92-562 added subsec. (f).

1970 - Subsec. (a)(2). Pub. L. 91-350 specified that the term "express or implied contracts with the United States" includes express or implied contracts with the Army and Air Force Exchange Service, Navy Exchanges, Marine Corps Exchanges, Coast Guard Exchanges, or Exchange Councils of the National Aeronautics and Space Administration.

1966 - Subsec. (e). Pub. L. 89-719 added subsec. (e).

1964 - Subsec. (d). Pub. L. 88-519 struck out provisions which prohibited district courts from exercising jurisdiction of civil actions or claims to recover fees, salary, or compensation for official services of officers or employees of the United States.

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1958 - Subsec. (b). Pub. L. 85-508 struck out reference to District Court for Territory of Alaska. See section 81A of this title which establishes a United States District Court for the State of Alaska.

1954 - Subsec. (a)(1). Act July 30, 1954, struck out language imposing jurisdictional limitation of \$10,000 on suits to recover taxes.

1951 - Subsec. (d). Act Oct. 31, 1951, inserted references to "claim" and "employees".

1949 - Subsec. (a)(1). Act May 24, 1949, Sec. 80(a), inserted ", (i) if the claim does not exceed \$10,000 or (ii)". Subsec. (b). Acts Apr. 25, 1949, and May 24, 1949, Sec. 80(b), made a technical change to correct "chapter 173" to read "chapter 171", and inserted "on and after January 1, 1945" after "for money damages".

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-331 effective Oct. 1, 1997, see section 3(d) of Pub. L. 104-331, set out as an Effective Date note under section 1296 of this title.

EFFECTIVE DATE OF 1992 AMENDMENT

Amendment by Pub. L. 102-572 effective Oct. 29, 1992, see section 911 of Pub. L. 102-572, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1982 AMENDMENTS

Amendment by Pub. L. 97-248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for the applicability of the amendment to any partnership taxable year ending after Sept. 3, 1982, if the partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97-248, set out as an Effective Date note under section 6221 of Title 26, Internal Revenue Code. Amendment by Pub. L. 97-164 effective Oct. 1, 1982, see section 402 of Pub. L. 97-164, set out as a note under section 171 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-563 effective with respect to contracts entered into 120 days after Nov. 1, 1978 and, at the election of the contractor, with respect to any claim pending at such time before the contracting officer or initiated thereafter, see section 16 of Pub. L. 95-563, set out as an Effective Date note under section 601 of Title 41, Public Contracts.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91-350 provided that:

"(a) In addition to granting jurisdiction over suits brought after the date of enactment of this Act (July 23, 1970), the provisions of this Act (amending this section and section 1491 of this title and section 724a of former Title 31, Money and Finance) shall also apply to claims and civil actions dismissed before or pending on the date of enactment of this Act if the claim or civil action is based upon a transaction, omission, or breach that occurred not more than six years prior to the date of enactment of this Act (July 23, 1970).

"(b) The provisions of subsection (a) of this section shall apply notwithstanding a determination or judgment made prior to the date of enactment of this Act that the United States district courts or the United States Court of Claims did not have

jurisdiction to entertain a suit on an express or implied contract with a nonappropriated fund instrumentality of the United States described in section 1 of this Act."

EFFECTIVE DATE OF 1966 AMENDMENT

Section 203 of title II of Pub. L. 89-719 provided that: "The amendments made by this title (amending this section and sections 1402 and 2410 of this title) shall apply after the date of the enactment of this Act (Nov. 2, 1966)."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment by Pub. L. 85-508 effective Jan. 3, 1959, on admission of Alaska into the Union pursuant to Proc. No. 3269, Jan. 3, 1959, 24 F.R. 81, 73 Stat. c16, as required by sections 1 and 8(c) of Pub. L. 85-508, see notes set out under section 81A of this title and preceding section 21 of Title 48, Territories and Insular Possessions.

TERMINATION OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF THE CANAL ZONE

For termination of the United States District Court for the District of the Canal Zone at end of the "transition period", being the 30-month period beginning Oct. 1, 1979, and ending midnight Mar. 31, 1982, see Paragraph 5 of Article

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XI of the Panama Canal Treaty of 1977 and sections 2101 and 2201 to 2203 of Pub. L. 96-70, title II, Sept. 27, 1979, 93 Stat. 493, formerly classified to sections 3831 and 3841 to 3843, respectively, of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 995, 1295, 1402, 1413, 2402, 2409a, 2671, 2676, 2677, 2678, 2679, 2680, 3901, 3902, 3903, 3905 of this title; title 2 section 190g; title 3 sections 435, 451, 453; title 5 sections 3373, 3374, 8477; title 10 sections 1054, 1089; title 14 sections 821, 823a; title 16 sections 450ss-3, 698v-5; title 18 section 2712; title 22 sections 2702, 3761, 4606; title 25 sections 640d-17, 1680c; title 26 section 7422; title 29 section 938; title 32 section 509; title 38 sections 515, 1151, 7316; title 41 sections 113, 602; title 42 sections 233, 238q, 405, 2212, 2221, 2223, 2458a, 4654, 5055, 7142c; title 43 section 1737; title 46 App. section 1242; title 47 section 606; title 48 section 1905; title 49 section 44309; title 50 App. sections 9, 2410.

Source: <http://uscode.house.gov/usc.htm>

UPDATE: None

28 U.S.C. §2671, et seq., 2002

Federal Tort Claims Act

Section 2671. Definitions

As used in this chapter and sections 1346(b) and 2401(b) of this title, the term "Federal agency" includes the executive departments, the judicial and legislative branches, the military departments, independent establishments of the United States, and corporations primarily acting as instrumentalities or agencies of the United States, but does not include any contractor with the United States.

"Employee of the government" includes officers or employees of any federal agency, members of the military or naval forces of the United States, members of the National Guard while engaged in training or duty under section 316, 502, 503, 504, or 505 of title 32, and persons acting on behalf of a federal agency in an official capacity, temporarily or permanently in the service of the United States, whether with or without compensation.

"Acting within the scope of his office or employment", in the case of a member of the military or naval forces of the United States or a member of the National Guard as defined in section 101(3) of title 32, means acting in line of duty.

Section 2672. Administrative adjustment of claims

The head of each Federal agency or his designee, in accordance with regulations prescribed by the Attorney General, may consider, ascertain, adjust, determine, compromise, and settle any claim for money damages against the United States for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred: Provided, That any award, compromise, or settlement in excess of \$25,000 shall be effected only with the prior written approval of the Attorney General or his designee. Notwithstanding the proviso contained in the preceding sentence, any award, compromise, or settlement may be effected without the prior written approval of the Attorney General or his or her designee, to the extent that the Attorney General delegates to the head of the agency the authority to make such award, compromise, or settlement. Such delegations may not exceed the authority delegated by the Attorney General to the United States attorneys to settle claims for money damages against the United States. Each Federal agency may use arbitration, or other alternative means of dispute resolution under the provisions of subchapter IV of chapter 5 of title 5, to settle any tort claim against the United States, to the extent of the agency's authority to award, compromise, or settle such claim without the prior written approval of the Attorney General or his or her designee.

Subject to the provisions of this title relating to civil actions on tort claims against the United States, any such award, compromise, settlement, or determination shall be final and conclusive on all officers of the Government, except when procured by means of fraud.

Any award, compromise, or settlement in an amount of \$2,500 or less made pursuant to this section shall be paid by the head of the Federal agency concerned out of appropriations available to that agency. Payment of any award,

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compromise, or settlement in an amount in excess of \$2,500 made pursuant to this section or made by the Attorney General in any amount pursuant to section 2677 of this title shall be paid in a manner similar to judgments and compromises in like causes and appropriations or funds available for the payment of such judgments and compromises are hereby made available for the payment of awards, compromises, or settlements under this chapter. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant, and shall constitute a complete release of any claim against the United States and against the employee of the government whose act or omission gave rise to the claim, by reason of the same subject matter.

Section 2673. Reports to Congress

The head of each federal agency shall report annually to Congress all claims paid by it under section 2672 of this title, stating the name of each claimant, the amount claimed, the amount awarded, and a brief description of the claim.

Section 2674. Liability of United States

The United States shall be liable, respecting the provisions of this title relating to tort claims, in the same manner and to the same extent as a private individual under like circumstances, but shall not be liable for interest prior to judgment or for punitive damages.

If, however, in any case wherein death was caused, the law of the place where the act or omission complained of occurred provides, or has been construed to provide, for damages only punitive in nature, the United States shall be liable for actual or compensatory damages, measured by the pecuniary injuries resulting from such death to the persons respectively, for whose benefit the action was brought, in lieu thereof.

With respect to any claim under this chapter, the United States shall be entitled to assert any defense based upon judicial or legislative immunity which otherwise would have been available to the employee of the United States whose act or omission gave rise to the claim, as well as any other defenses to which the United States is entitled.

With respect to any claim to which this section applies, the Tennessee Valley Authority shall be entitled to assert any defense which otherwise would have been available to the employee based upon judicial or legislative immunity, which otherwise would have been available to the employee of the Tennessee Valley Authority whose act or omission gave rise to the claim as well as any other defenses to which the Tennessee Valley Authority is entitled under this chapter.

Section 2675. Disposition by federal agency as prerequisite; evidence

(a) An action shall not be instituted upon a claim against the United States for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, unless the claimant shall have first presented the claim to the appropriate Federal agency and his claim shall have been finally denied by the agency in writing and sent by certified or registered mail. The failure of an agency to make final disposition of a claim within six months after it is filed shall, at the option of the claimant any time thereafter, be deemed a final denial of the claim for purposes of this section. The provisions of this subsection shall not apply to such claims as may be asserted under the Federal Rules of Civil Procedure by third party complaint, cross-claim, or counterclaim.

(b) Action under this section shall not be instituted for any sum in excess of the amount of the claim presented to the federal agency, except where the increased amount is based upon newly discovered evidence not reasonably discoverable at the time of presenting the claim to the federal agency, or upon allegation and proof of intervening facts, relating to the amount of the claim.

(c) Disposition of any claim by the Attorney General or other head of a federal agency shall not be competent evidence of liability or amount of damages.

Section 2676. Judgment as bar

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The judgment in an action under section 1346(b) of this title shall constitute a complete bar to any action by the claimant, by reason of the same subject matter, against the employee of the government whose act or omission gave rise to the claim.

Section 2677. Compromise

The Attorney General or his designee may arbitrate, compromise, or settle any claim cognizable under section 1346(b) of this title, after the commencement of an action thereon.

Section 2678. Attorney fees; penalty

No attorney shall charge, demand, receive, or collect for services rendered, fees in excess of 25 per centum of any judgment rendered pursuant to section 1346(b) of this title or any settlement made pursuant to section 2677 of this title, or in excess of 20 per centum of any award, compromise, or settlement made pursuant to section 2672 of this title.

Any attorney who charges, demands, receives, or collects for services rendered in connection with such claim any amount in excess of that allowed under this section, if recovery be had, shall be fined not more than \$2,000 or imprisoned not more than one year, or both.

Section 2679. Exclusiveness of remedy

(a) The authority of any federal agency to sue and be sued in its own name shall not be construed to authorize suits against such federal agency on claims which are cognizable under section 1346(b) of this title, and the remedies provided by this title in such cases shall be exclusive.

(b)(1) The remedy against the United States provided by sections 1346(b) and 2672 of this title for injury or loss of property, or personal injury or death arising or resulting from the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment is exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the employee whose act or omission gave rise to the claim or against the estate of such employee. Any other civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate is precluded without regard to when the act or omission occurred.

(2) Paragraph (1) does not extend or apply to a civil action against an employee of the Government--

(A) which is brought for a violation of the Constitution of the United States, or

(B) which is brought for a violation of a statute of the United States under which such action against an individual is otherwise authorized.

(c) The Attorney General shall defend any civil action or proceeding brought in any court against any employee of the Government or his estate for any such damage or injury. The employee against whom such civil action or proceeding is brought shall deliver within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon him or an attested true copy thereof to his immediate superior or to whomever was designated by the head of his department to receive such papers and such person shall promptly furnish copies of the pleadings and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought, to the Attorney General, and to the head of his employing Federal agency.

(d)(1) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a United States district court shall be deemed an action against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant.

(2) Upon certification by the Attorney General that the defendant employee was acting within the scope of his office or employment at the time of the incident out of which the claim arose, any civil action or proceeding commenced upon such claim in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States for the district and division embracing the place in which the action or proceeding is pending. Such action or proceeding shall be deemed to be an action or proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as

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the party defendant. This certification of the Attorney General shall conclusively establish scope of office or employment for purposes of removal.

(3) In the event that the Attorney General has refused to certify scope of office or employment under this section, the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment. Upon such certification by the court, such action or proceeding shall be deemed to be an action or

proceeding brought against the United States under the provisions of this title and all references thereto, and the United States shall be substituted as the party defendant. A copy of the petition shall be served upon the United States in accordance with the provisions of Rule 4(d)(4) of the Federal Rules of Civil Procedure. In the event the petition is filed in a civil action or proceeding pending in a State court, the action or proceeding may be removed without bond by the Attorney General to the district court of the United States for the district and division embracing the place in which it is pending. If, in considering the petition, the district court determines that the employee was not acting within the scope of his office or employment, the action or proceeding shall be remanded to the State court.

(4) Upon certification, any action or proceeding subject to paragraph (1), (2), or (3) shall proceed in the same manner as any action against the United States filed pursuant to section 1346(b) of this title and shall be subject to the limitations and exceptions applicable to those actions.

(5) Whenever an action or proceeding in which the United States is substituted as the party defendant under this subsection is dismissed for failure first to present a claim pursuant to section 2675(a) of this title, such a claim shall be deemed to be timely presented under section 2401(b) of this title if--

(A) the claim would have been timely had it been filed on the date the underlying civil action was commenced, and

(B) the claim is presented to the appropriate Federal agency within 60 days after dismissal of the civil action.

(e) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677, and with the same effect.

Section 2680. Exceptions

The provisions of this chapter and section 1346(b) of this title shall not apply to—

(a) Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

(b) Any claim arising out of the loss, miscarriage, or negligent transmission of letters or postal matter.

(c) Any claim arising in respect of the assessment or collection of any tax or customs duty, or the detention of any goods or merchandise by any officer of customs or excise or any other law-enforcement officer.

(d) Any claim for which a remedy is provided by sections 741-752, 781-790 of Title 46, relating to claims or suits in admiralty against the United States.

(e) Any claim arising out of an act or omission of any employee of the Government in administering the provisions of sections 1-31 of Title 50, Appendix.

(f) Any claim for damages caused by the imposition or establishment of a quarantine by the United States.

[(g) Repealed. Sept. 26, 1950, c. 1049, § 13(5), 64 Stat. 1043.]

(h) Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights: Provided, That, with regard to

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acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of assault, battery, false imprisonment, false arrest, abuse of process, or malicious prosecution. For the purpose of this subsection, "investigative or law enforcement officer" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

- (i) Any claim for damages caused by the fiscal operations of the Treasury or by the regulation of the monetary system.
- (j) Any claim arising out of the combatant activities of the military or naval forces, or the Coast Guard, during time of war.
- (k) Any claim arising in a foreign country.
- (l) Any claim arising from the activities of the Tennessee Valley Authority.
- (m) Any claim arising from the activities of the Panama Canal Company.
- (n) Any claim arising from the activities of a Federal land bank, a Federal intermediate credit bank, or a bank for cooperatives.

Source: <http://uscode.house.gov/usc.htm>

APPENDIX 5-6: 31 U.S.C. § 1535 - Agency Agreements

Sec. 1535. - Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if -

- (1) amounts are available;
- (2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;
- (3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and
- (4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is deobligated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in -

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(1) providing goods or services; or

(2) making an authorized contract with another person to provide the requested goods or services.

(e) This section does not -

(1) authorize orders to be placed for goods or services to be provided by convict labor; or

(2) affect other laws about working funds

APPENDIX 5-7: Table 2-1 and 2-2, AR 700-131 – Loan, Lease and Donation of Army Materiel

Table 2-1. Equipment normally executed on a reimbursable basis: agreements, bonds, and insurance requirements				
Borrower	Loan or lease agreement required	Surety bond required	Vehicular insurance required	Radioactive material license (as applicable)
Army or other DOD activities	See note (1)	No	No	Yes (5 , 6)
Non-DOD Federal department and agencies	Yes	No	No	Yes
Civil authorities (State and local governments)	Yes	Yes (2)	Yes (2)	Yes (7)
Civilian activities (veteran's organizations, youth groups, etc.)	Yes	Yes	Yes	Yes (7)
Commercial Corporations	Yes	Yes (3)	Yes (4)	Yes (7)

Notes:

1. A hand receipt or other document assigning responsibility will suffice for retail activities. A loan agreement will be required for material on loan from wholesale activities.
2. In emergency disaster relief cases, bonds and insurance will be provided within 5 days after receipt of the materiel.
3. This applies when the [Federal Acquisition Regulation \(FAR\) Part 45](#) and subparts are not applicable.
4. The requirement for a surety bond or insurance may be waived if one or the other is in effect.
5. For radioactive commodities, existing Army Commodity Licenses may cover the requirement. Contact the item manager for details.
6. For other DOD organizations, the service or agency license will probably cover the requirement. The DOD (recipient) representative must coordinate the license information.
7. An NRC license or a license from an NRC approved "Agreement State" will satisfy the requirement.

Table 2-2. Loan or lease approval authority				
Requester	Category of equipment	Loan period/extension	Action office	Approval authority
Authorized recipients	Wholesale (Army	120 days/none	AMC MSC	HQAMC (AMCOPS-

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

(para 2-11)	Working Capital Fund) loans (nonexpendable items)	(1-year repair program — other Services)		SLA)
All (leases)	Prototype/ developmental major items	As required	SARD-SA	ASA (ALT)
Army and other DOD activities (RDT&E)	MACOM owned	1 year/none	Installation	Installation commander
	ARNG owned	1 year/none	USPFO	State AG
	USAR owned	1 year/none	Installation	USARC MSC
	Historical property (to include military art, arms, combat/ tactical vehicles, vessels and aircraft)	2 years/2years	DAMH-MD	Chief, CMH
	Prime Power Program	1 year/1 year	HQDA (ZCM)	Asst Chief of Engineers
	Floating plant	As negotiated	Water resource support center	Asst Chief of Engineers
	COMSEC	1 year/none	USACCSLA	USACCSLA
	Wholesale equipment (no readiness/DAMPL impact)	1 year/1 year	AMC MSC	HQAMC (AMCOPS-SLA)
	Wholesale equipment (readiness/DAMPL impact)	1 year/none	AMC MSC	HQDA ODCS, G-4
Army RDT&E activities; or Army procurement agencies for use by contractor personnel or Government contractor	Wholesale equipment (no readiness/DAMPL impact)	2 years/none	AMC MSC	HQAMC (AMCOPS-SLA)
	Wholesale equipment (readiness/DAMPL impact)	2 years/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	Asst Chief of Engineers
	Floating plant	As negotiated	Water resource support center	Asst Chief of Engineers
	COMSEC	2 years/none	USACSLA	USACSLA
Federal departments and agencies (non-DOD)	All arms, combat/ tactical vehicles, vessels and aircraft (fielded equipment)	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
	Prime Power Program	1 year/1 year	HQDA (DAEN-ZCM)	Asst Chief of Engineers
	Floating Plant	As negotiated	Water Resource Support Center	Asst Chief of Engineers
	Wholesale equipment (no readiness/DAMPL	1 year/1 year	AMC MSC	HQAMC (AMCOPS-SLA)

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

	impact), other than arms, combat/ tactical vehicles, vessels and aircraft			
	Wholesale equipment (readiness/DAMPL impact), other than arms, combat/ tactical vehicles, vessels and aircraft	1 year/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Medical (other than combat/tactical vehicles, vessels and aircraft)	Over 180 days	DASG-LOZ	HQDA (DASG-LOZ)
	Medical (ARNG owned, other than combat/tactical vehicles, vessels and aircraft)	Fewer than 180 days	USFPO	State AG
	Medical (MACOM owned, other than combat/ tactical vehicles, vessels and aircraft)	Fewer than 180 days	Commander, U.S. Army Medical Center (MEDCEN)/ Medical Department Activity (MEDDAC)	Installation commander
	Medical (USAR owned, other combat/ vehicles, vessels and aircraft)	Fewer than 180 days	Installation	USAR MSC
	Medical (wholesale owned), other than combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	U.S. Army Medical Materiel Agency	Commander, USAMMA
	MACOM owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation commander
	Historical property (to include military art, arms, combat/ tactical vehicles, vessels and aircraft)	2 years/2 years	DAMH-MD	Chief, CMH
	USAR owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USAR MSC
	ARNG owned (other equipment), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USPFO	State AG
National Museum	Historical property, to include military art, arms, combat/ tactical vehicles, vessels and aircraft	As required for exhibition	DAMH-MD	Chief, CMH
Activities outside				

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

Federal Government:				
State; local government agencies; schools; churches; commercial activities	All arms, combat/tactical vehicles, vessels and aircraft (fielded equipment)	As required	HQDA (DALO-SMP)	ASA (ALT)
	Medical (other than combat/tactical vehicles, vessels and aircraft)	Over 180 days	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
	Medical (MACOM owned), except arms, combat/ tactical vehicles, vessels and aircraft	Fewer than 180 days	MEDCEN MEDDAC	Installation commander
	Other equipment, wholesale (no readiness/DAMPL impact), except arms, combat/tactical vehicles, vessels and aircraft	1 year/ 1 year	AMC MSC	HQAMC (AMCOPS-SLA)
	Other equipment, wholesale (readiness/DAMPL impact), except arms, combat/tactical, vehicles, vessels and aircraft	1 year/none	AMC MSC	HQ ODCS, G-4 (DALO-SMP)
	MACOM owned, except arms, combat/tactical, vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation
	ARNG owned, except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USPFO	State AG
	USAR owned, except arms, combat/tactical, vehicles, vessels and aircraft	Fewer than 180 days	Installation	USAR MSC
Manufacturers for lease of previously produced materiel for demonstration purposes involving foreign	All equipment except prototype and nonstandard equipment	As required	ASA (ALT)	DASA (DEC)
	All prototype and nonstandard equipment	As required	ASA (ALT)	ASA (ALT)
Manufacturers for lease of previously produced materiel in support of R&D initiatives within the United States	All equipment except prototype and nonstandard	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
	All prototype and	As required	HQDA ODCS,	ASA (ALT)

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

	nonstandard equipment		G-4 (DALO-SMP)	
Department of Agriculture:				
U.S. Forest Service	Protection against wildlife	90 days/90 days	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
	Avalanche control	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Animal Disease Eradication Program	All equipment except arms, combat/tactical vehicles, vessels and aircraft	90 days	HQDA ODCS, G-3 (DAMO-OD)	Operations and Readiness
DOJ, FBI	Aircraft piracy/all equipment except arms, combat/tactical vehicles, vessels and aircraft	Minimum essential	HQDA ODCS, G-3	DOD General Counsel or designee; in urgent cases, Deputy Director for Operations
Department of Treasury, United States Secret Service	All equipment except arms, combat/tactical vehicles, vessels and aircraft	Minimum essential	HQDA ODCS, G-3	Executive Secretary of the Department of Defense Military Assistant to the President
Civilian law enforcement:				
Civil disturbances and terrorist activities and planned events with potential for lethal force	All personnel, arms, combat/ tactical vehicles, vessels, and aircraft, even if applicable under other categories	15 days/15 days	HQDA ODCS, G-3 (DAMO-OD) through ASA (ALT)	SECDEF
	Riot control agents, concertina wire, and other equipment to be employed in control of civil disturbances	15 days/15 days	HQDA ODCS, G-3 (DAMO-OD) through ASA (ALT)	SECDEF
	Fire fighting resources and equipment of a protective nature (masks, helmets, body armor, vests) and use of Army facilities	15 days/15 days	Installation	Installation commander, State AG, Commander Military District of Washington/CG Unified Commands outside continental United States (OCONUS)/ HQAMC
Other law/drug enforcement activities	Medical, except combat/tactical vehicles, vessels and aircraft	Over 180 days	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
	Medical (MACOM owned), except combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Commander (MEDCEN/MEDDAC)	Installation commander

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

	Medical (ARNG owned), except, combat/tactical and aircraft	Fewer than 180 days	USPFO	State AG
	Medical (USAR owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USARC MSC
	Medical wholesale, except combat/ tactical vehicles, vessels, aircraft	Less than 180 days	USAMMA	Commander, USAMMA
	Other wholesale equipment (no readiness/DAMPL impact), except combat/tactical vehicles, vessels and aircraft	1 year/1 year	AMC MSC	HQDA AMC (AMCOPS-SLA)
	Other wholesale equipment (readiness/DAMPL impact), except combat/tactical vehicles, vessels and aircraft	1 year/none	AMC MSC	HQDA ODCS, G-4 (DALO-SMP)
	Other equipment (MACOM owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	Installation commander
	Other equipment (ARNG owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	USFPO	State AG
	Other equipment (USAR owned), except arms, combat/tactical vehicles, vessels and aircraft	Fewer than 180 days	Installation	USARC MSC
Federal law enforcement agencies (only)	Ammunition	As required	HQDA ODCS, G-4 (DALO-SMP/Supply Management Army (SMA)	ASA (ALT)
Red Cross (aid to DOD in time of war)	Administrative and general support	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Foreign governments	All equipment, except combat/ tactical vehicles, vessels and aircraft	As required, not to exceed 5 years	HQDA ODCS, G-4 (DALO-SMP)	Director, Defense Security Assistance Agency
Youth groups:				
Boy and Girl Scouts of America (world or national jamborees); Civil Air Patrol; Camp	MACOM owned	As required for event	Installation	Installation commander

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

Fire Girls, Inc; YMCA; YWCA; Boy's Club of America; Four-H Clubs; and similar groups				
	Wholesale	As required for event	AMC MSC	HQAMC
	USAR owned	As required for event	Installation	USARC MSC
	ARNG owned	As required for event	USFPO	State AG
Army flying clubs	Aircraft	As negotiated	Installation	ASA (ALT), Command General (CG) FORSCOM continental United State (CONUS)
Veterans organizations	Convention assistance (furniture)	15 days/15 days	Installation	Installation commander
	Furniture (MACOM owned)	15 days/15 days	Installation	Installation commander
	Furniture (ARNG owned)	15 days/15 days	USPFO	State AG
	Burial functions (obsolete rifles)	As required	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
Aid to District of Columbia Government in combating crime	Materiel and supplies	As negotiated	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
Disaster relief: Federal Emergency Management Agency (FEMA)	Materiel and supplies	For minimum essential period	HQDA (DAMO-OD)	SECDEF
	For rehabilitation reconstruction (bridges, etc.)	For minimum essential period when requested by FEMA	HQDA ODCS, G-4 (DALO-SMP)	ASA (ALT)
USACE District Commander	Flood fighting equipment and supplies	For minimum essential period	USACE District	
American National Red Cross in support of local civilian Government disaster relief	Materiel and supplies	For minimum essential period	Installation	Installation commander
	USAR owned, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	Installation	USARC MSC
	ARNG-owned, except	For minimum	USPFO	State AG

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

	arms, combat/tactical and aircraft	essential period		
Environmental Protection Agency and U.S. Coast Guard (oil and petroleum spills)	Materiel, supplies, and equipment	For minimum essential period	HQDA ODCS, G-3 (DAMO-OD)	ASA (ALT)
Environmental Protection Agency and U.S. Coast Guard	Equipment/supplies, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	HQDA ODCS, G-3 (DAMO-OD)	ASD (&L)
Foreign Disaster Assistance	Equipment/supplies, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	Through Department of State to HQDA ODCS, G-3 (DAMO-OD)	ASD (International Security Affairs)
Civil Defense	Equipment/supplies, except arms, combat/tactical vehicles, vessels and aircraft	For minimum essential period	Installation	CG, FORSCOM
Museums and Similar Activities	Historical arms, combat/tactical vehicles, vessels and aircraft	2 year/2 year	DAMH-MD	ASA (ALT)
	Historical property other than arms, combat/tactical vehicles, vessels and aircraft	2 years/2years	DAMH-MD	Chief, CMH
	Military art	2 years/2years	DAMH-MD	Chief, CMH
Community relations and domestic action programs (Youth Conservation Corps)	Equipment for instructional purposes	As negotiated	Installation	Installation commander
	ARNG owned	As negotiated	USPFO	State AG
	USAR owned	As negotiated	Installation	USARC MSC
Authorized military health care recipients	Military	As required	HQDA (DASG-LOZ)	HQDA (DASG-LOZ)
SSF Installations	Class VII (wholesale equipment/DAMPL impact)	1 year/1 year	AMC MSC	AMC MSC
HQDA	Class VII wholesale equipment (readiness/DAMPL impact)	1 year/1 year	AMC MSC	ODCS, G-4

The full text of this regulation can be found at:

https://akocomm.us.army.mil/usapa/epubs/xml_pubs/r700_131/head.xml

APPENDIX 5-8: NGR 500-1/ANGI 10-8101 - Military Support to Civil Authorities

See next page.

**National Guard Regulation 500-1/
ANGI 10-8101**

**Emergency Employment of Army and Other
Resources**

**National Guard
Domestic
Operations**

Departments of the Army and the Air Force
National Guard Bureau
Arlington, VA 22202-3231
13 June 2008

UNCLASSIFIED

NGR 500-1/ANGI 10-8101

13 June 2008

SUMMARY of CHANGE

NGR 500-1/ANGI 10-8101
National Guard Domestic Operations
dated 13 June 2008

- o Reflects the growth and changes in the responsibilities for Domestic Operations of the National Guard and the National Guard Bureau.
- o Incorporates the *National Response Framework*, the National Defense Authorization Act of 2008, as well as changes to the U.S. Code and other National Policies and Strategies.
- o Addresses the full range of National Guard Domestic Operations, including National Guard Homeland Defense and National Guard Civil Support and standardizes the terminology and concepts of these operations and mission areas.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

Departments of the Army and the Air Force
National Guard Bureau
Arlington, VA 22202-3231
13 June 2008

*NGR 500-1/ANGI 10-8101

Emergency Employment of Army and Other Resources

National Guard Domestic Operations

By Order of the Secretaries of the Army and the Air Force:

H STEVEN BLUM
Lieutenant General, USA
Chief, National Guard Bureau

Official:

GEORGE R. BROCK
Chief, Strategy and Policy Division

History. This publication is a major revision. While both the U.S. Armed Forces and the National Guard have a long history of conducting domestic operations; the scale, scope, and complexity of these operations have expanded significantly since September 11, 2001. Prior to then, military involvement in domestic operations was almost exclusively in the area of civil support operations; generally limited to providing support to civil authorities in response to natural disasters or accidents. Post 9/11, the National Guard's role has expanded to include additional Homeland Defense and Homeland Security missions.

Summary. This regulation/instruction prescribes policies, procedures, responsibilities, and direction for activities required for the operational employment or training of Army and Air National Guard units, personnel, and equipment. It governs the training, planning, preparations, and operations of National Guard units and forces in the Homeland, hereafter referred to as National Guard Domestic Operations (NGDO).

Applicability. This regulation/instruction applies to the National Guard Bureau (NGB) and to the Army and Air National Guards of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, and the Virgin Islands, hereafter referred to as the several states. It does not apply to National Guard units or forces when they are serving in their federal role in the Army National Guard of the United States or the Air National Guard of the United States. When operating in their federal role, these units and forces are under Department of Defense (DoD) direction and control.

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

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

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

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

* This publication supersedes NGR 500-1/ANGI 10-8101, 1 February 1996

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

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Chapter 1 Introduction

1-1. Purpose

- a. Update and consolidate the policy and responsibilities for National Guard Domestic Operations.
- b. Define consistent terminology and concepts for use by the National Guard Bureau and the National Guard of the several states for the planning and conduct of National Guard Domestic Operations.
- c. Provide direction for the planning and reporting requirements for National Guard Domestic Operations.
- d. Define National Guard capabilities for NGDO.

1-2. References

Required and related publications and prescribed and referenced forms are listed in Appendix A. Supporting regulations and instructions, grouped by subject, are provided in Appendix B.

1-3. Explanation of Abbreviations and Terms

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

Chapter 2 Responsibilities

2-1. The Chief of the National Guard Bureau (CNGB)

- a. Serves as the principal advisor to the Secretaries of the Army and Air Force and to the Army and Air Force Chiefs of Staff on matters relating to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.
- b. Serves as a principal advisor to the Secretary of Defense, through the Chairman of the Joint Chiefs of Staff, on matters involving non-federalized National Guard forces and on other matters as determined by the Secretary of Defense.
- c. Ensures the National Guard Bureau performs those functions contained in the National Guard Bureau Charter in AR 130-5/AFMD 10, as defined in regulations, or such other functions as may be prescribed by the Secretary of Defense, the Secretary of the Army, or the Secretary of the Air Force.
- d. Acts as the channel of communication to The Adjutants General, but has no authority to command the National Guard and does not have command authority over the National Guard. However, the CNGB may direct the National Guard on matters to include force structure, training, and appropriations.
- e. Directs six appropriations: three for the Army National Guard and three for the Air National Guard (pay and allowance, operations and maintenance, and construction for each organization).
- f. Supports, as required, the reporting requirements of the Secretary of Defense on National Guard readiness for National Guard Domestic Operations including the Annual Report on National Guard and Reserve Component Equipment and Quarterly Personnel and Unit Readiness reports.
- g. Supports the Secretary of Defense in his annual reporting requirement to the Congress on National Guard and Reserve Component Equipment by certifying the inventory of authorized and appropriated National Guard equipment (Title 10 U.S. Code, § 10541).
- h. Issues such other publications as necessary, provided that such publications are consistent with approved policies of the Secretary and Chief of Staff of the Department concerned. Such publications may cover areas of operation not fully clarified or detailed in departmental publications but will be binding only upon the Army or Air National Guard, as appropriate.
- i. Issues and maintains the additional NG 500-series regulations that establish the standards and responsibilities for the National Guard capabilities for domestic operations.
- j. Develops, maintains, and promulgates NGDO readiness and reporting systems and processes.

2-2. The Director of the Joint Staff of the National Guard Bureau (NGBDJS)

- a. Directs the Joint Staff of the National Guard Bureau. The NGB DJS is a Major General and is subordinate to the CNGB.
- b. Leads and directs NGB Joint Staff actions to assist the CNGB in accomplishing his/her responsibilities for the strategic direction of the National Guard forces; their operation under unified command; and their integration into an efficient team of land and air forces.

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c. Assists the CNGB in the decision making and execution process of NG missions and performs such other duties as the CNGB may prescribe.

2-3. The Director, Army National Guard (DARNG)

- a. Directs resources to provide combat-ready units under the supervision and control of the CNGB. The DARNG is a Lieutenant General.
- b. Performs those administrative and operational functions of the CNGB pertaining to the Army National Guard and the Army National Guard of the United States.
- c. Formulates long range plans, programs, and budgets for input to the Department of the Army in support of state and federal missions.
- d. Administers Army Guard resources for force structure, personnel, facilities, training, and equipment.
- e. Serves as the conduit between the Army Chief of Staff and the CNGB in all matters relating to ARNG involvement in NGDO.
- f. Is responsible for sourcing support requests for ARNG assets.

2-4. The Director, Air National Guard (DANG)

- a. Directs resources to provide combat-ready units under the supervision and control of the CNGB. The DANGs a Lieutenant General.
- b. Performs those administrative and operational functions of the CNGB pertaining to the Air National Guard and the Air National Guard of the United States.
- c. Formulates long range plans, programs, and budgets for input to the Department of the Air Force in support of state and federal missions.
- d. Administers Air Guard resources for force structure, personnel, facilities, training, and equipment.
- e. Serves as the conduit between the Air Force Chief of Staff and the CNGB in all matters relating to ANG involvement in NGDO.
- f. Is responsible for sourcing support requests for ANG assets.

2-5. The Adjutants General (TAGs) of the Several States

- a. Generally exercises the command authority of the Governor over state National Guard units and forces within their jurisdiction, in accordance with applicable state laws.
- b. Typically serves, in accordance with state law, as the principal advisor to the Governor on military matters. The Adjutant General (or Commanding General, where appropriate) directs and oversees the daily activities of the state National Guard in order to accomplish the statutory and regulatory functions assigned.
- c. Supports the CNGB in his/her advisory role to senior leaders of the Department of Defense and other federal agencies.
- d. 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 terrorism by gathering and submitting required information from their respective state or territory.
- e. 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.
- f. Maintains the training and readiness of their assigned forces to conduct all assigned state and federal missions.
- g. Monitors the implementation of this publication and ensures that all directed actions are completed in a timely manner.
- h. Revises existing documents or develops implementing documents as necessary to comply with this publication and other instructions/regulations related to NGDO.
- i. Complies with the reporting requirements specified in this publication.
- j. Prepares and submits plans for NGDO as directed in this publication.
- k. Supports the CNGB in his/her role as the channel of communications between the several states and the Secretary of Defense on matters relating to the National Guard. Operates and maintains a Joint Operations Center (JOC) with the capability to receive and respond to classified messages, execute command and control operations, and provide situational awareness of NG activities and operations.

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Chapter 3
Authorities for National Guard Domestic Operations

3-1. The National Guard Bureau

a. Under the provisions of Title 10 U.S. Code, section (§) 10501, as revised by the National Defense Authorization Act for Fiscal Year 2008, the National Guard Bureau is: first, a joint activity of the Department of Defense and second, the channel of communications between the Departments of the Army and the Air Force and the several states on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

b. Under the provisions of Title 10 U.S. Code, § 10503, the NGB is also responsible for:

(1) Prescribing the training discipline and training requirements for the Army National Guard (ARNG) and the Air National Guard (ANG)

(2) Assisting the Secretary of Defense in facilitating and coordinating the use of National Guard personnel and resources operating under Title 32 status or in support of state missions with other federal agencies, the TAGs of the several states, U.S. Joint Forces Command, and with the Combatant Commands with geographic responsibility for the United States

(3) Ensuring that units and members of the ARNG and ANG are trained by the several states in accordance with approved programs, policies, and guidance from the Secretaries of the Army, Air Force, and the respective Service Chiefs of Staff

(4) Facilitating and supporting the training of members and units of the National Guard to meet state requirements.

c. Pursuant to the requirements of Title 10 U.S. Code, § 10503, the Secretary of the Army and the Secretary of the Air Force jointly developed Army Regulation 130-5/Air Force Mission Directive 10 to define the organization and functions of the National Guard Bureau and to promulgate a charter for the NGB. The National Defense Authorization Act for Fiscal Year 2008 directs the Secretary of Defense, in consultation with the Secretaries of the Army and the Air Force, and the Chairman of the Joint Chiefs of Staff to develop and prescribe a revised charter for the National Guard Bureau.

d. The National Guard Bureau is the federal military coordination, administrative, policy, and logistical coordination center for the Army and Air National Guard.

e. During National Guard Domestic Operations, the National Guard Bureau provides policy guidance and facilitates assistance, when needed, by locating and coordinating National Guard units and resources.

f. In its role as the channel of communication, the National Guard Bureau assists the Secretary of Defense in preparing a plan for coordinating the use of the National Guard and members of the Armed Forces on active duty when responding to natural disasters, acts of terrorism, and other man-made disasters by providing information gathered from Governors, the Adjutants General, and other state civil authorities responsible for homeland preparation and response.

3-2. The National Guard of the Several States

The National Guard maintains a unique "dual status" -- with both state and federal roles and missions. This dual status is rooted in Article 1, § 8 of the Constitution. These constitutionally-based dual roles and missions result in each Guardsman holding memberships in both the Army or Air National Guard of his or her state -- for their state role and missions -- and also in the Army or Air National Guard of the United States -- for their federal role and missions.

a. The Duty Statuses in which the Guard Operates. Determining whether National Guard Soldiers and Airmen are operating in a federal status or in a state status is critical to defining their roles, responsibilities, and authorities. Status is also the primary factor for determining the applicability of law for such issues as benefits, protections, and liabilities. For instance, some laws apply to Soldiers and Airmen when they are in federal status but not when they are in state status. National Guard personnel should check with their legal office to determine a particular law's applicability.

(1) The distinction between state and federal status often assumes critical legal and financial importance. Two key principles are crucial in clarifying the status of National Guard personnel:

(a) Unless ordered into federal service, National Guard Soldiers and Airmen serve in a State Active Duty or Title 32 status, under a state chain of command, with the Governor as commander in chief.

(b) The determination of whether these Soldiers or Airmen are in federal or state status does not rest on the entity that funds the activity, but rather on the entity exercising command and control.

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(2) The President and the Governor define the circumstances under which Guardsmen would be involved in National Guard Domestic Operations in their federal and state roles respectively.

b. Authorities for Guard Operations in a Federal Status. Members of the Army National Guard and the Air National Guard are not in active federal service except when ordered or called into active federal service under proper authority. National Guard Soldiers and Airmen serving in federal status as members of the Army or Air National Guard of the United States are governed by the same authorities as their respective Title 10 Service Components.

(1) Combatant Commands

(a) United States Northern Command (USNORTHCOM) is the DoD Combatant Commander (CCDR) with responsibility for most of the United States Homeland. USNORTHCOM anticipates and conducts Homeland Defense and civil support operations involving Title 10 military forces within its assigned Area of Responsibility (AOR) to defend, protect, and secure the United States and its interests. USNORTHCOM's AOR includes air, land and sea approaches and encompasses the continental United States, Alaska, Canada, and Mexico. It also includes the surrounding continental waters out to approximately 500 nautical miles, the Gulf of Mexico and the Straits of Florida.

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

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

(d) United States Pacific Command (USPACOM) is responsible for Homeland Defense and DSCA involving Title 10 military forces for Hawaii and U.S. territories and possessions in the Pacific.

(2) When National Guard Soldiers and Airmen are called to active federal service by the President or Secretary of Defense to conduct Domestic Operations in the Homeland, they will receive orders assigning them to an appropriate CCDR.

c. Authorities for National Guard Operations in a State Status. When not in active federal service, members of the National Guard are administered, armed, equipped, and trained in their status as members of the Army National Guard and the Air National Guard of the several states per Title 10 U. S. Code, § 10107 and § 10113. Members of the National Guard in a state status, Military Technicians, and Title 32 Active Guard/Reserve (AGR) members are governed by the authorities found in Title 32 U.S. Code, regulation, and by the laws of their respective state or territory.

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

(2) When National Guard units or forces are not under federal control, they report to the Governor of their respective state, territory (Puerto Rico, Guam, Virgin Islands) or the Commanding General of the District of Columbia National Guard. Each of the 54 National Guard organizations is supervised by The Adjutant General (TAG) (or Commanding General, where appropriate) of the state or territory who normally exercises command of its National Guard forces for the state Governor. Under state law, the National Guard provides for the protection of life and property as well as preserving peace, order, and public safety.

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

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Chapter 4 National Guard Domestic Operations Missions

4-1. The Mission of the National Guard Bureau

The National Guard Bureau is a joint activity of the Department of Defense and the Chief of the National Guard Bureau (CNGB) is a principal advisor to the Secretary of Defense. As defined in AR 130-5/AFMD 10, the mission of the National Guard Bureau is to:

- a. Participate with the Army and the Air Force staffs in the formulation, development, and coordination of all programs, policies, concepts, and plans pertaining to or affecting the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.
- b. Develop and administer such detailed operating programs as are required for the operation of the Army National Guard and the Air National Guard, based on approved programs, policies, and guidance from the Department of the Army and the Department of the Air Force.
- c. Participate with and assist the several states in the organization, maintenance, and operation of their National Guard units so as to provide trained and equipped units capable of immediate expansion to war strength, and available for service in time of war or emergency to augment the Active Army and Air Force.

4-2. National Guard Domestic Operations Missions

- a. National Guard Domestic Operations fall into three mission areas:
 - (1) Homeland Defense — for which DoD serves as the primary federal agency and military forces are used to conduct military operations in defense of the Homeland
 - (2) National Guard Civil Support — for which the National Guard normally serves in a supporting role to other primary state or federal agencies by providing assistance to U.S. civil authorities at the federal, state, tribal, and local levels
 - (3) The National Guard Baseline Operating Posture — in which the National Guard conducts required planning, training, and exercises, as well as some ongoing mandated domestic operations.
- b. It is important to point out that in some circumstances National Guard Civil Support and Homeland Defense missions may overlap.
- c. National Guard Homeland Defense Missions. Homeland Defense operations are conducted in the air, land, maritime, and space domains and in the information environment. DoD is the primary federal agency for Homeland Defense, supported by other agencies. On order of the President or Secretary of Defense, National Guard units may be called to defend the Homeland against external threats. Certain National Guard units have been assigned roles in support of Homeland Defense missions, including the Air Defense of the Homeland and the Anti-Missile Defense of the Homeland. The general focus of National Guard Homeland Defense missions is on deterring and detecting external threats to the Homeland.
 - (1) While conducting Homeland Defense missions, the Guard is typically in a federal Title 10 duty status. Training and preparations for Homeland Defense missions may be conducted in Title 32 duty status. Extensive deliberate planning and preparation are required for Homeland Defense missions, as well as mission specific planning and training. National Guard forces may be required to assist civil authorities in mitigating the consequences of any attack. The National Guard must always be prepared to conduct National Guard Civil Support missions.
 - (2) Title 32 U.S. Code, Chapter 9 provides that the Secretary of Defense may provide funds to a Governor to employ National Guard units or members to conduct homeland defense activities that the Secretary determines to be necessary and appropriate for participation by the National Guard units or members, as the case may be. DoD has not yet published regulations implementing this provision of law and it has never been used.
- d. National Guard Civil Support Missions. DoD defines Civil Support (CS) as “Department of Defense support to civil authorities for domestic emergencies, and for designated law enforcement and other activities.” Civilian authorities retain primary responsibility during Civil Support operations with DoD supporting mission requirements. When federally activated, National Guard Soldiers and Airmen conduct Civil Support missions as members of the Army or Air National Guard of the United States.
 - (1) The National Guard Bureau defines National Guard Civil Support (NGCS) as, “Support provided by the National Guard of the several states while in State Active Duty status or Title 32 duty status to civil authorities for domestic emergencies, and for designated law enforcement and other activities.” National Guard Soldiers and Airmen conduct National Guard Civil Support missions in their state role.
 - (2) The National Guard supports local, state, and federal civil authorities. Almost all National Guard Civil Support is provided in Title 32 duty status or in State Active Duty status under the command and control of the

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Governors. Under the Insurrection Act and other federal statutory authorities, the President may utilize the National Guard in its federal status as members of the Army National Guard of the United States and the Air National Guard of the United States.

(3) National Guard Civil Support missions are conducted to assist in:

(a) Supporting civil authorities whose capabilities or capacity is insufficient to meet current requirements with general purpose, specialized, or unique Guard forces or capabilities

(b) Protecting the life, property, and safety of U.S. citizens and U.S. persons

(c) Protecting critical U.S. infrastructure

(d) Providing humanitarian assistance during disaster response and domestic emergencies

(e) Providing support to designated law enforcement activities and operations

(f) Providing support to designated events, programs, and other activities.

(4) The National Guard is frequently called on to conduct disaster response and domestic emergency missions. These missions are a specific subset of the National Guard Civil Support mission area. The primary responsibility for disaster relief is with the local and/or state government. Due to the local nature of most disasters, most disaster response and domestic emergency NGCS operations will be carried out under the guidance and direction of the Governor, keeping National Guard personnel under state control (either State Active Duty or Title 32 duty status). NGDO activities should be coordinated to maximize interstate cooperation during major events.

(5) Disaster response and domestic emergency missions have distinct characteristics and traits from the other missions in the National Guard Civil Support mission area. The focus of these missions is usually on providing humanitarian support and no threat or hostility is normally anticipated. While some generalized deliberate planning and preparation is possible, conditions often dictate an immediate response is required with minimal preparation or planning time available. While some specialized National Guard units and capabilities are utilized for disaster response and domestic emergency missions, normally the bulk of the forces and units employed are general purpose forces. The duration of National Guard disaster response and domestic emergency missions is typically days to weeks.

(6) In addition to the disaster response and domestic emergency missions, there are a wide range of other National Guard Civil Support missions. They range from providing support to law enforcement agencies, supporting National Special Security Events (NSSE), and protecting critical infrastructure, among others. The general focus of these NGCS missions is usually on providing support that is security-related. Normally, some level of threat or hostility is either possible or anticipated. While some generalized deliberate planning and preparation may be possible for these missions, normally mission specific planning and training will be required once National Guard support has been requested and approved. The forces utilized for National Guard Civil Support missions are typically units and/or force packages tailored and trained for the mission requirements and possessing the capabilities necessary for the specific mission. The duration of these National Guard Civil Support missions is typically weeks to months.

(7) In accordance with Title 10 U.S. Code, § 377, reimbursement may be required from a federal agency to which law enforcement support or support to a National Special Security Event is provided by National Guard personnel performing duty under Title 32 U.S. Code, § 502 (f). The Secretary of Defense may waive reimbursement.

e. The National Guard Baseline Operating Posture

(1) The National Guard of the several states operate on a day to day basis in the National Guard Baseline Operating Posture. They conduct required planning, training, and exercises, as well as ongoing mandated domestic operations in this posture. Additionally they deploy from this posture to conduct domestic operations in either the National Guard Homeland Defense or National Guard Civil Support domestic mission areas.

(2) The general focus of the National Guard Baseline Operating Posture is to maintain National Guard readiness to conduct all assigned missions in both its state and federal roles. Additionally, the National Guard maintains situational awareness of the Homeland operational environment and conducts mandated ongoing operations. Extensive training, deliberate planning, and preparation are required as well as mission specific planning and training. All National Guard forces not otherwise assigned either overseas or domestically operate on a day to day basis in this posture. National Guard Baseline Operating Posture missions are typically either long duration or ongoing requirements.

(3) The National Guard Baseline Operating Posture is intended to:

(a) Assist in deterring and preventing attacks on the U.S. Homeland.

(b) Maintain well trained and well equipped units prepared to conduct or support state or federal missions.

(c) Maintain situational awareness and detect threats or concerns.

(d) Conduct mandated ongoing domestic operations e.g., counterdrug operations.

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(4) While operating in its Baseline Operating Posture, the National Guard is typically in Title 32 status working as a state asset for the Governor.

Chapter 5 National Guard Capabilities for Domestic Operations

5-1. Introduction

a. The National Guard of the several states maintain unique capabilities for domestic operations. The National Guard Bureau establishes the requirements for these capabilities and defines their standards. This ensures consistency, commonality, and interoperability when National Guard units and forces conduct NGDO outside their respective state or territorial borders. The required standards for these unique capabilities for NGDO are established by the NGB in NG 500-series regulations.

b. In addition to their unique capabilities for domestic operations, a number of the National Guard's other inherent capabilities, designed to respond quickly and decisively to global requirements, also allow its rapid response to requirements within the United States.

c. The National Guard Bureau is committed to the fundamental principle that each state and territory must possess ten core capabilities for homeland readiness. Governors count on National Guard assets to be available to them within the first hours of a domestic incident. To meet the Governors' requirements, the CNGB established the following list of 10 essential capabilities for National Guard Domestic Operations:

- (1) Aviation/Airlift
- (2) Command and Control (C2)
- (3) Chemical, Biological, Radiological, Nuclear, and high-yield Explosives (CBRNE) response
- (4) Engineering
- (5) Medical
- (6) Communications
- (7) Transportation
- (8) Security
- (9) Logistics
- (10) Maintenance

5-2. National Guard Joint Force Headquarters-State (JFHQ-State)

AR 130-5/AFMD 10 requires the establishment of state military headquarters in each of the several states. The JFHQ-State provides command and control of all National Guard forces in the state or territory for the Governor, or in the case of the District of Columbia, the Secretary of the Army, and can act as a joint service headquarters for national-level response efforts during contingency operations. The JFHQ-State is also responsible for providing situational awareness/common operating picture information to the NGB and other national level headquarters before and during selected domestic operations and for providing joint reception, staging, onward movement, and integration (JRSOI) of all inbound forces.

5-3. National Guard Joint Task Force-State (JTF-State)

The National Guard JTF-State provides command and control for all state military assets deployed in support of civil authorities or for a specific domestic operation and facilitates the flow of information between the Joint Force Headquarters-State (JFHQ-State) and the deployed units. When National Guard units or forces are deployed to conduct NGDO, a National Guard JTF-State may be created to maintain command and control of those forces, and, as directed, other supporting state and federal forces.

5-4. The National Guard Counterdrug Program (NGCD)

The National Guard Counterdrug Program is part of the U.S. national drug control strategy. As initially authorized by the President and Congress in 1989, the Department of Defense provides funds on a yearly basis to Governors of states who submit plans specifying how that state's National Guard is to be used to support drug interdiction and counterdrug activities. Support generally falls into two categories - providing support to help law enforcement stop illegal drugs from being imported, manufactured and distributed; and supporting drug demand reduction programs. These operations are conducted under the command and control of the state Governor, and not in a federal military status. Specific direction for personnel, equipment, and training for the National Guard Counterdrug Program is contained in NGR 500-2/ANGI 10-801.

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5-5. National Guard Weapons of Mass Destruction - Civil Support Team (WMD-CST)

WMD-CSTs perform duties in support of emergency preparedness programs to prepare for or respond to emergencies involving the use or threatened use of a Weapon of Mass Destruction (WMD), a terrorist attack or threatened terrorist attack that results in or could result in catastrophic loss of life or property, the intentional or unintentional release of nuclear, biological, radiological or toxic or poisonous chemicals that result in or could result in catastrophic loss of life or property, or a natural or manmade disaster that results in or could result in catastrophic loss of life or property. WMD-CSTs respond only to emergencies in the United States. Per Title 10 U.S. Code, § 12310, Guardsmen assigned to a WMD-CST may only conduct WMD-CST operations within the geographical limits of the United States, its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands. Specific direction for personnel, equipment, and training for the National Guard Weapons of Mass Destruction - Civil Support Teams is contained in NGR 500-3/ANGI 10-2503.

5-6. National Guard Reaction Force (NGRF)

NGRFs provide every state with a ready force capable of delivering, when requested, a unit of 50-75 personnel within 4-8 hours and a follow-on force of up to 400 personnel within 24-36 hours. They can provide site security, presence patrols/show of force, establish roadblocks and/or checkpoints, control civil disturbances, provide force protection/security for WMD-CST or Chemical, Biological, Radiological, Nuclear, and high-yield Explosives Enhanced Response Force Package (CERFP) operations, or respond to and assist in protecting selected assets as required.

5-7. Critical Infrastructure Protection-Mission Assurance Assessment (CIP-MAA) Detachments

The 2005 Defense Authorization Act included modifications to Title 32 U.S. Code that allow an enhanced role for the National Guard in assessing and protecting critical infrastructure, leveraging the Guard's unique strength as a member of the local community, with its close relationship to commercial and private sector entities. CIP-MAA Detachments conduct all hazard risk assessments on prioritized federal and state critical infrastructure in support of the Defense Critical Infrastructure Program (DCIP).

5-8. Chemical, Biological, Radiological, Nuclear, and high-yield Explosives (CBRNE) Enhanced Response Force Package (CERFP)

CERFPs respond to a CBRNE incident and support local, tribal, state, and federal agencies managing the consequences of the event by providing capabilities to conduct casualty/patient decontamination, medical support, and casualty search and extraction. They provide immediate response capabilities to the Governor to include searching an incident site (including damaged buildings); rescuing any casualties (including extracting anyone trapped in the rubble); personnel decontamination; and performing medical triage (including trauma resuscitation and stabilization).

5-9. Joint CONUS Communications Support Environment (JCCSE)

JCCSE encompasses all of the vital organizations and supporting net-centric IT capabilities required by the National Guard to support DoD and the federal military and other National Guard Domestic Operations mission partners by extending interagency trusted information sharing and collaboration capabilities to and from the national level, the several states, and local incident sites.

5-10. National Guard Modular Airborne Fire Fighting System (MAFFS)

MAFFS provides the United States Forest Service with additional aerial fire fighting assets to assist after the capabilities of contract air tankers have been exhausted. Congress established the Modular Airborne Fire Fighting System to assist in wildfire suppression. MAFFS use Air National Guard aircraft to release retardant or water from special tanks through tubes at the rear of the plane. MAFFS units do not require any aircraft modifications and can be loaded or unloaded using specially designed trailers located at each MAFFS operational unit.

5-11. Other National Guard Capabilities for Domestic Operations

The National Guard of the several states provide and maintain the following additional capabilities for National Guard Domestic Operations:

- a. National Guard Expeditionary Medical Support (EMEDS). EMEDS is a modular, scalable, rapid response medical package that can be used in domestic operations such as humanitarian relief and disaster response. EMEDS comes in four modular building blocks: the Small Portable Expeditionary Aerospace Rapid Response (SPEARR)

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package, EMEDS Basic, EMEDS+10, and EMEDS+25. EMEDS facilities provides 24 hour emergency medical care plus the following capabilities: Medical Command and Control, preventive medicine, primary care, force medical protection, trauma resuscitation and stabilization, limited surgery, primary care, aeromedical evacuation coordination, aerospace medicine, urgent care, dental care, and limited ancillary services for the force and the population at risk.

b. ANG Fatality & Services Recovery Response Team (FSRT). FSRT is activated in response to mass fatality operations or accidents that may require support to local, tribal, state, or federal agencies. The FSRT is not only associated with natural or man-made disasters, but may include military aircraft mishaps and military mass casualty operations. The FSRT is a reach back capability for the National Guard CBRNE Enhanced Response Force Package (CERFP). FSRT capabilities include fatality management, food service, beddown, and water requirements.

Chapter 6

Planning and Reporting Requirements

6-1. Planning Requirements

a. National Guard Domestic Operations vary in scale, scope, and complexity and are most frequently conducted in support of local, tribal, and state authorities. However, NGDO can include operations in support of federal agencies and the Department of Defense while simultaneously serving the Governors of their respective states. The complexity of this operational environment requires comprehensive planning to enable mission success when responding to both immediate and deliberate requests for support. Consequently, states will prepare and maintain plans for employment of their respective National Guard organizations in support of NGDO.

b. Plans should consider an all hazards approach to potential emergency situations and contain provisions for actions to be taken before, during, and after disasters. Plans should be developed and aligned with local, tribal, state, and federal response plans. Consideration should be given to continuity of operations, command and control, survivability, equipment evacuation, alert procedures, communications, and requests for support external to the state. Rules for the use of force should be specified in advance of NGDO. Plans should contain provisions for the potential transition to federal status. Plans should be exercised on a regular basis.

6-2. The National Response Framework (NRF)

a. The *National Response Framework* (NRF), was developed to build upon the *National Response Plan* (NRP) and to establish a more comprehensive and streamlined national all hazards approach to domestic incident management. It forms the basis of how the federal government coordinates with state, local, and tribal governments and the private sector during incidents.

b. The National Guard of the several states and the National Guard Bureau shall consider the NRF in the planning and conduct of NGDO.

6-3. Compliance with the National Incident Management System (NIMS)

a. NIMS provides a consistent nationwide approach for federal, state, tribal, and local governments to work effectively and efficiently together to prepare for, prevent, respond to, recover from and mitigate domestic incidents, regardless of cause, size or complexity. NIMS includes a core set of concepts, principles, terminology, and technologies covering the Incident Command System (ICS); Multiagency Coordination Systems (MCS); unified command; training; identification and management of resources (including systems for classifying types of resources); qualifications and certification; and the collection, tracking, and reporting of incident information and incident resources. This framework forms the basis for interoperability and compatibility that will subsequently enable a diverse set of public and private organizations to conduct well integrated and effective incident management operations.

b. The Air Force established the Air Force Information Management System (AFIMS) in AFI 10-2501. AFIMS is based on the NIMS methodology and aligns Air Force EM planning and response with the NRP as directed by Homeland Security Presidential Directive 5 (HSPD-5).

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

6-4. The Emergency Management Assistance Compact (EMAC)

a. The Emergency Management Assistance Compact is a 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. The compact sets out the responsibilities of the signatory states, provides authority to officials responding from other states (except the power of arrest) equal to that held by residents of the affected state, ensures reciprocity in recognizing professional licenses or permits for professional skills, and provides liability protection (in certain areas) to responders from other states. The National Emergency Management Association (NEMA), a professional association of state emergency managers, administers the compact.

b. 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.

c. The National Guard and the National Guard Bureau will include options to utilize personnel and resources as outlined in EMAC in their planning for NGDO.

6-5. Contingency Plan Development and Submission

a. The JFHQ-States will develop and maintain written Level 3 (Base Plan plus selected Annexes) "All Hazards" contingency plans to address threats/potential disasters as specified by their respective Adjutant General. (Such plans should address at least those potential contingencies addressed in the Homeland Security Council's National Planning Scenarios, as identified in Homeland Security Presidential Directive 8/Annex I.) Such plans may be prepared as part of state interagency plans, and need not be standalone National Guard plans. (OPR: NGB-J5, Plans and Policy Division)

b. Upon Combatant Commander (CCDR) request, through the NGB, the JFHQ-States may develop supporting plans to CCDR contingency plans for NGDO missions. These plans will be standalone National Guard plans, and will be provided to the requesting CCDR through the NGB.

c. JFHQ-States are encouraged to coordinate their plans with adjacent states, and to review the plans at least annually. NGB-J5 is available to assist with plan development and coordination, and will from time to time suggest planning issues, share observed best practices, and host workshops and training activities focused on plans issues.

d. Copies of Level 3 plans prepared by the JFHQ-States will be provided to the NGB upon Adjutant General approval of the plan, and after each review. In the event the National Guard plan is a portion of a state interagency plan which may not be released to the NGB, an extract of the state plan showing the National Guard C2 Construct/Task Organization, task and purpose of all National Guard capabilities and forces accounted for in that plan will be prepared and provided to the NGB.

e. Annually in October, each JFHQ-State will provide a list of such plans it maintains, showing at least number and unclassified name of the plan, and date of publication or most recent review.

6-6. Reporting Requirements

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

b. Additionally, the CNGB is required to submit to the Secretary of Defense, through the Secretaries of the Army and the Air Force, an annual report on the state of the National Guard and the ability of the National Guard to meet its missions.

c. Reports submitted by the several states to the NGB are analyzed, compiled, and forwarded to senior leaders within the National Guard, the Department of Defense and other supporting agencies. These reports are vital to the effective and efficient management of National Guard personnel and equipment, and are critical to the conduct of NGDO and the national response to domestic emergencies.

d. NGR 500-series regulations direct the unique reporting requirements of specific domestic operations capabilities. For example, the unique reporting requirements associated with the WMD-CST capability are contained within NGR 500-3/ANGI 10-2503.

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6-7. Mission Reporting

a. The timely and accurate submission of information during a civil emergency, natural disaster or WMD incident is essential for decision-making at all levels of leadership. It is imperative that National Guard units provide accurate assessments of their operational environment to enable situational awareness and support local, tribal, state, and federal decision processes. National Guard units supporting NGDO will provide standard situation reports as directed by the states and the National Guard Bureau.

b. On 30 May 2006, the NGB Director of Domestic Operations issued a memorandum for the states and territories with the subject: State Situational Reporting Time and Format Change. This memorandum directs specific situational reporting requirements for state Joint Operations Centers. A reporting template designed to standardize reports is attached to the memorandum. These reports are to be submitted to the NGB JOC.

c. AFI 10-206 provides additional guidance for Air National Guard units.

d. Serious Incidents/Accidents that occur while conducting NGDO training and missions will be reported in accordance with NGR 385-10, AR 190-40 and AFI 91-301.

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Appendix A
References

Section I
Required References

This section contains no entries.

Section II
Related References

AFI 10-206/ANGSUP 1
Operational Reporting

AFI 10-2501
Air Force Emergency Management (EM) Program Planning And Operations

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

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

AR 190-40
Serious Incident Report

The Constitution of the United States of America

HSPD-5
Management of Domestic Incidents

JP 1-02
Department of Defense Dictionary of Military and Associated Terms

NGR 385-10
Army National Guard Safety & Occupational Health Program

NGR 500-2/ANGI 10-801
National Guard Counterdrug Support

NGR 500-3/ANGI 10-2503
Weapons of Mass Destruction Civil Support Team Management

National Response Framework

National Incident Management System

10 USC
Armed Forces

32 USC
National Guard

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Section III Prescribed Forms

This section contains no entries.

Section IV Related Forms

This section contains no entries.

Appendix B Supporting Regulations and Instructions by Subject

<u>Subject</u>	<u>Supporting Regulations and Instructions</u>
Active Guard / Reserve Program (Title 32)	NGR (AR) 600-5, <i>The Active Guard/Reserve (AGR) Program, Title 32, Full-Time National Guard Duty (FTNGD)</i> , 20 Feb 90 AR 135-18, <i>The Active Guard Reserve (AGR) Program</i> , 1 Nov 04 ANGI 36-101, <i>The Active Guard/Reserve (AGR) Program</i> , 3 May 02
Aircraft - Use of Army and Air National Guard Aircraft	NG PAM 95-5, <i>Use of Army National Guard Aircraft</i> , 30 Jun 97 AR 700-131, <i>Loan, Lease and Donation of Army Material</i> , 23 Aug 04 AFI 65-503, <i>USAF Cost and Planning Factors</i> , 4 Feb 94 DOD Directive 4500.56, <i>DOD Policy on the use of Government Aircraft and Air Travel</i> , 2 Mar 97, CH 1- 19 Apr 99
Airlift	NGR (AR) 59-1/NGR (AF) 55-100, <i>ANG Airlift Operational Procedures</i> , 1 Feb 91
Air Transportation of Civilian Passengers and Cargo	DOD Directive 4513-R, <i>Air Transportation Eligibility</i> , 1 Nov 94, CH 1- 20 Oct 95, CH 2- 18 Nov 96, CH 3- 9 Apr 98 DOD Directive 4500.09E, <i>Transportation and Traffic Management</i> , 11 Sep 07 AR 95-1, <i>Flight Regulations</i> , 3 Feb 06 NGR 95-1, <i>ARNG Flight Regulations</i> , 1 Aug 91 ANGI 10-201, <i>Air Transportation</i> , 29 Nov 04
Aviation Training	NGR (AR) 95-210, <i>Army National Guard: General Provisions and Regulations for Aviation Training</i> , 1 Jul 91
Civilian Law Enforcement – Support to Civilian Law Enforcement Officials	DOD Directive 5525.5, <i>DOD Cooperation with Civilian Law Enforcement Officials</i> , 15 Jan 86, CH 1- 20 Dec 89
Counterdrug Program	NGR 500-2/ANGI 10-801, <i>National Guard Counterdrug Support</i> , 31 Mar 00 ANGMAN 10-1101, <i>Counterdrug (CD) Tactics C-26B and UC-26C Aircraft</i> , 31 Jan 97

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Critical Infrastructure Program

DOD Directive 3020.40, *Defense Critical Infrastructure Program (DCIP)*, 19 Aug 2005

Equipment Authorization

NG PAM (AR) 71-13, *Equipment Authorization Guide*, 31 Dec 91
AFMAN 23-110/ANGSUP1, *Equipment Management*, 15 Sep 04

Equipment – Loans and Lease of Equipment

AR 700-131, *Loan, Lease and Donation of Army Material*, 23 Aug 04
AFI 23-119, *Exchange, Sale or Temporary Custody of Nonexcess Personal Property*,
5 Jun 01

Flight Safety

NG CIR 385-95, *Army National Guard (ARNG) Aviation Safety Program and Aviation
Accident Prevention Plan (AAPP)*, 29 Mar 02
AFI 91-202 of 1 Aug 98 / ANGSUP 1 of 27 Jan 06, *The US Air Force Mishap Prevention
Program*

Financial Management

NG PAM (AR) 37-1, *Financial Management Guide for National Guard Executives*, 15
Sep 99
NGR 37-108, *Fiscal Accounting and Reporting, Army National Guard*, 11 Aug 80,
CH 1- 30 Apr 82
NGR 37-110/ANGR 177-08, *Control of TDY Travel and Per Diem Costs*, 31 Aug 83
NGR 37-111, *Administration of Training and Special Work Workdays*, 1 Mar 89, CH 1-
30 Sep 93

Intelligence

DOD Directive 5240.01, *DoD Intelligence Activities*, 27 Aug 07
AR 381-10, *US Army Intelligence Activities*, 3 May 07

Logistics

NG PAM 11-1, *Command Logistics Review Program (CLRP)*, 16 Jan 90
AR 130-400, *Logistical Policies for Support*, 5 Jan 77

Manning – Full-Time Support Manning

NGB PAM 570- Series, *Manning Staffing Guides for the Army National Guard
AR 135-2, Army National Guard (ARNG) and US Army Reserve (USAR) Full-Time
Support Program*, 15 Jan 06

Military Emergency Preparedness Liaison Officers

DOD Directive 3025.16, *Military Emergency Preparedness Officer (EPLO) Program*,
18 Dec 00

National Guard Bureau – Organization and Functions

AR 130-5/AFMD 10, *Organization and Functions of National Guard Bureau*, 30
Dec 01

Reports

AR 190-40, *Serious Incident Report*, 9 Feb 06
AR 220-1, *Unit Status Reporting*, 19 Dec 06
ARNGR 220-1, *Unit Status Reporting*, 1 Aug 90
AFI 10-201, *Status of Resources and Training System*, 13 Apr 06
AFI 10-206, *Operational Reporting*, 4 Oct 04

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Public Affairs

NGB PAM 360-5/ANGP 35-1, *National Guard Public Affairs Guidelines*, 29 Jun 01
AFI 35-101, *Public Affairs Policies and Procedures*, 29 Nov 05

Safety - Occupational Health, Prevention and Reporting

NGR 385-10, *Army National Guard Safety & Occupational Health Program*, 7 Oct 88
AR 385-40, *Accident Reporting and Records*, 1 Nov 94
AFI 91-301/ANGSUP 1, *Air Force Occupational and Environmental Safety, Fire Prevention, and Health (AFOSH) Program*, 3 Sep 97
AFI 91-202/ANGSUP 1, *US Air Force Mishap Prevention Program*, 27 Jan 06
AFI 91-204, *Safety Investigations and Reports*, 14 Feb 06

Secret Service Support

DOD Directive 3025.13, *Employment of Department of Defense Resources in support of the United States Secret Service*, 13 Sep 85

Special Events

DOD Directive 2000.15, *Support to Special Events*, 21 Nov 94

State Defense Forces

NGR 10-4, *State Defense Forces National Guard Bureau and State National Guard Interaction*, 21 Sep 87

Training

NGR (AR) 350-1, *Army National Guard Training*, 3 Jun 91
ANGI 36-2001, *Management of Training and Operational Support within the Air National Guard*, 15 Jan 97

United States Property and Fiscal Officers

NGR 130-6/ANGI 36-2, *United States Property & Fiscal Officer Appointment, Duties and Responsibilities*, 1 Jul 07

Vehicles - Use of Vehicles

DOD 4500.36-R, *Management, Acquisition and Use of Motor Vehicles*, 16 Mar 07
AR 700-131, *Loan, Lease and Donation of Army Material*, 23 Aug 04
AFI 24-302, *Vehicle Management*, 30 Jun 06, IC 27 Oct 06

Weapons of Mass Destruction - Civil Support Team (WMD-CST)

NGR 500-3/ANGI 10-2503, *Weapons of Mass Destruction Civil Support Team Management*, 12 Jan 2006

NGR 500-1/ANGI 10-8101

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Glossary

**Section I
Abbreviations**

AFI
Air Force Instruction

AFMAN
Air Force Manual

AFMD
Air Force Mission Directive

AGR
Active Guard and Reserve

ANG
Air National Guard

ANGMAN
Air National Guard Manual

ANGSUP
Air National Guard Supplement

ANGUS
Air National Guard of the United States

AO
Area of Operations

AOR
Area of Responsibility

AR
Army Regulation

ARNG
Army National Guard

ARNGUS
Army National Guard of the United States

ASD(HD)
Assistant Secretary of Defense (Homeland Defense)

ASD(RA)
Assistant Secretary of Defense (Reserve Affairs)

AT
Antiterrorism

BMD
Ballistic Missile Defense

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C2

Command and Control

CBRNE

Chemical, Biological, Radiological, Nuclear, and high-yield Explosives

CCDR

Combatant Commander

CD

Counterdrug

CERFP

CBERNE Enhanced Response Force Package

CIP

Critical Infrastructure Protection

CIP-MAA

Critical Infrastructure Protection - Mission Assurance Assessment

CJCS

Chairman of the Joint Chiefs of Staff

CJCSI

Chairman of the Joint Chiefs of Staff instruction

CJTF

Commander, Joint Task Force

CM

Consequence Management

CNGB

Chief of the National Guard Bureau

CONUS

Continental United States

CrM

Crisis Management

CS

Civil Support

CT

Counterterrorism

DANG

Director, Air National Guard

DARNG

Director, Army National Guard

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DCI
Defense Critical Infrastructure

DCIP
Defense Critical Infrastructure Program

DHS
Department of Homeland Security

DoD
Department of Defense

DODD
Department of Defense Directive

DODI
Department of Defense Instruction

DSCA
Defense Support of Civil Authorities

EMAC
Emergency Management Assistance Compact

EMEDS
Expeditionary Medical Support

EOC
Emergency Operations Center

EP
Emergency Preparedness

ESF
Emergency Support Function

FP
Force Protection

FSRT
Fatality & Services Recovery Response Team

HD
Homeland Defense

HQ
Headquarters

HS
Homeland Security

HSPD
Homeland Security Presidential Directive

IAW
In Accordance With

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ICS

Incident Command System

IM

Incident Management

ISR

Intelligence, Surveillance, and Reconnaissance

JA

Judge Advocate

JCCSE

Joint CONUS Communications Support Environment

JFC

Joint Force Commander

JFHQ-State

Joint Force Headquarters - State

JOA

Joint Operations Area

JOC

Joint Operations Center

JP

Joint Publication

JRSOI

Joint Reception, Staging, Onward movement, and Integration

JTF

Joint Task Force

JTF-State

Joint Task Force - State

LEA

Law Enforcement Agency

MAFFS

Modular Airborne Fire Fighting System

NCI&KA

National Critical Infrastructure and Key Assets

NCR

National Capital Region

NG

National Guard

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NGB
National Guard Bureau

NGBDJS
Director of the Joint Staff of the National Guard Bureau

NGB-J3/DO
National Guard Bureau Director of Domestic Operations

NGCD
National Guard Counterdrug program

NGCS
National Guard Civil Support

NGDO
National Guard Domestic Operations

NGO
Nongovernmental Organization

NGR
National Guard Regulation

NGRF
National Guard Reaction Force

NIMS
National Incident Management System

NORAD
North American Aerospace Defense Command

NRF
National Response Framework

NRP
National Response Plan

NSSE
National Special Security Event

OSD
Office of the Secretary of Defense

PA
Public Affairs

PAM
Pamphlet

PAO
Public Affairs Officer

PCA
Posse Comitatus Act

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RC

Reserve Component

RUF

Rules for the Use of Force

SAR

Search And Rescue

SecDef

Secretary of Defense

TAG

The Adjutant General

USAFR

United States Air Force Reserve

USA

United States Army

USAR

United States Army Reserve

USCG

United States Coast Guard

USCGR

United States Coast Guard Reserve

USG

United States Government

USMC

United States Marine Corps

USMCR

United States Marine Corps Reserve

USNORTHCOM

United States Northern Command

USN

United States Navy

USNR

United States Navy Reserve

WMD

Weapons of Mass Destruction

WMD-CST

Weapons of Mass Destruction - Civil Support Team

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Section II Terms

Air National Guard

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

Air National Guard of the United States

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

Antiterrorism

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

Army National Guard

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

Army National Guard of the United States

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

Civil Authorities

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

Civil Support

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

Counterdrug

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

Counterterrorism

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

Critical Infrastructure Protection

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

Defense Support of Civil Authorities

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

Force Protection

Preventive measures taken to mitigate hostile actions against military personnel (to include family members), resources, facilities, and critical information. Force Protection does not include actions to defeat the enemy or protect against accidents, weather, or disease. Also called FP.

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Homeland

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

Homeland Defense

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

Homeland Defense Activity

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

Homeland Security

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

Joint Reception, Staging, Onward movement, and Integration

A phase of joint force projection occurring in the operational area. This phase comprises the essential processes required to transition arriving personnel, equipment, and materiel into forces capable of meeting operational requirements. Also called JRSOI. (DoD, JP 1-02)

National Guard

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

National Guard Civil Support

Support provided by the National Guard of the several states while in State Active Duty status or Title 32 duty status to civil authorities for domestic emergencies, and for designated law enforcement and other activities. Also called NGCS.

National Guard Domestic Operations

The training, planning, preparing, and operating of National Guard units and forces conducted in the Homeland. Also called NGDO.

Primary Agency

The federal department or agency assigned primary responsibility for managing and coordinating a specific emergency support function in the National Response Plan. (DoD, JP 1-02)

Rules for the Use of Force

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

Several States

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

U.S. Person

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

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Weapons of Mass Destruction

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

Weapons of Mass Destruction – Civil Support Team

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

APPENDIX 5-9: Presidential Proclamation and EO 12804

See next page.

Presidential Documents

Proclamation 6427 of May 1, 1992

Law and Order in the City and County of Los Angeles, and Other Districts of California

By the President of the United States of America

A Proclamation

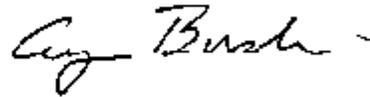
WHEREAS, I have been informed by the Governor of California that conditions of domestic violence and disorder exist in and about the City and County of Los Angeles, and other districts of California, endangering life and property and obstructing execution of the laws, and that the available law enforcement resources, including the National Guard, are unable to suppress such acts of violence and to restore law and order;

WHEREAS, such domestic violence and disorder are also obstructing the execution of the laws of the United States, in the affected area; and

WHEREAS, the Governor of California has requested Federal assistance in suppressing the violence and restoring law and order in the affected area,

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including Chapter 16 of Title 10 of the United States Code, do command all persons engaged in such acts of violence and disorder, to cease and desist therefrom and to disperse and retire peaceably forthwith.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and sixteenth.



[PR Doc. 59-10856
Filed 5-4-92 11:48 am]
Billing Code 3195-01-04

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

01 1003 22:00 FBIHQ HULL CRISIS CENTER TO 85723586 P.04

EXECUTIVE ORDER

PROVIDING FOR THE RESTORATION OF LAW AND ORDER
IN THE CITY AND COUNTY OF LOS ANGELES,
AND OTHER DISTRICTS OF CALIFORNIA

WHEREAS, I have today issued Proclamation No. 4389; and

WHEREAS, the conditions of domestic violence and disorder described therein continue, and the persons engaging in such acts of violence have not dispersed;

NOW, THEREFORE, by virtue of the authority vested in me as President of the United States and Commander in Chief of the Armed Forces by the Constitution and the laws of the United States, including Chapter 15 of Title 10 of the United States Code, it is hereby ordered as follows:

Section 1. Units and members of the Armed Forces of the United States and Federal law enforcement officers will be used to suppress the violence described in the proclamation and to restore law and order in and about the City and County of Los Angeles, and other districts of California.

Sec. 2. The Secretary of Defense is authorized to use such of the Armed Forces as may be necessary to carry out the provisions of section 1. To that end, he is authorized to call into the active military service of the United States units or members of the National Guard, as authorized by law, to serve in an active duty status for an indefinite period and until relieved by appropriate orders. Units or members may be relieved subject to recall at the discretion of the Secretary of Defense.

In carrying out the provisions of this order, the Secretary of Defense shall observe such law enforcement policies as the Attorney General may determine.

Sec. 3. Until such time as the Armed Forces shall have been withdrawn pursuant to section 4 of this order, the Attorney General is further authorized (1) to coordinate the activities of all Federal agencies assisting in the suppression of violence

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Y-01-1952 22130 FROM THE WHITE HOUSE

RETRORAMA P. 60

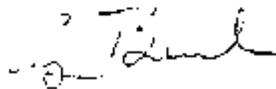
2

and in the administration of justice in and about the City and County of Los Angeles and other districts of California, and (2) to coordinate the activities of all such agencies with those of State and local agencies similarly engaged.

Sec. 4. The Secretary of Defense is authorized to determine when Federal military forces shall be withdrawn from the disturbance area and when National Guard units and members called into the active military service of the United States in accordance with section 2 of this order shall be released from such active service. Such determination shall be made in the light of the Attorney General's recommendations as to the ability of State and local authorities to resume full responsibility for the maintenance of law and order in the affected area.

Sec. 5. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

Sec. 6. Nothing contained in this order shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies or instrumentalities, its officers, or its employees.



THE WHITE HOUSE,
May 1, 1952.

APPENDIX 5-10: Execution of Operation to Assist in Restoring Order to LA

Y-92-1992 22123 FROM (UC) OFFICE CENTER (U) 05723176 P.02



THE DEPUTY SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301-1000



May 1, 1992

MEMORANDUM FOR THE ACTING SECRETARY OF THE ARMY

FROM: THE ACTING SECRETARY OF DEFENSE

SUBJECT: Execution of Operations to Assist in Restoring Civil Order Under Law to Los Angeles and Other Districts of California

Pursuant to the Presidential Proclamation of today's date entitled "Law and Order in the City and County of Los Angeles, and other Districts of California" and the Executive Order of today's date entitled "Providing for the Restoration of Law and Order in the City and County of Los Angeles, and other Districts of California," and in accordance with applicable law, including chapter 15 of Title 10 of the United States Code, I direct you to:

- (1) employ Joint Task Force Los Angeles to assist in restoring civil order under law in Los Angeles and other districts of California; and
- (2) place in Federal status and assign to Joint Task Force Los Angeles appropriate units of the California National Guard, to assist in performing the mission directed by paragraph 1.

Implement this memorandum in a manner consistent with applicable law and the Executive Order cited above, and keep me informed.

Donald J. Atwood

2208 EDI

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

APPENDIX 5-11: JTF Los Angeles Legal AAR June 1992

See next page.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AFZW-JA-AL (27-1a)

9 June 1992

MEMORANDUM FOR Chief, G3 Operations, 7th Infantry Division (Light),
Fort Ord, California 93941

SUBJECT: After Action Report for Joint Task Force - Los Angeles

1. CUBLS Number: _____ Submitted by HQ, 7th Infantry
Division (Light), ATTN: AFZW-JA, MAJ Scott Black, DSN 929-6416.
2. Operation. Joint Task Force - Los Angeles, 1 May 1992 - 10 May
1992.
3. First Lesson Learned.
 - a. Keywords. Federalization.
 - b. Title. National Guard Preparedness.
 - c. Observation. From a legal standpoint, the National Guard
was unprepared for federalization.
 - d. Discussion. On 1 May 1992, the President directed
federalization of certain National Guard forces and the creation of
a joint task force to assist in civil disturbance operations.
While the National Guard forces responded quickly, from a legal
perspective, they appeared to be generally unprepared for the
transition to federal service. Guard attorneys were unfamiliar
with the benefits and problems associated with transitioning their
force to federal service.
 - e. Lesson Learned. National Guard Judge Advocates must
always be prepared for federalization. The Guard needs to develop
SOPs which allow a smooth transition, and they must understand the
implications of federalization before it happens. Many of the more
common issues (e.g., legal assistance issues like reemployment
rights and Soldiers and Sailors Civil Relief Act benefits) could be
addressed in the Garden Plot OPLAN.
 - f. Recommendations.
 - (1) The National Guard should develop a legal SCP that
outlines the mechanics and effects of federalizing their force.
 - (2) An annex should be added to the Garden Plot OPLAN
that highlights the key legal implications of federalizing the
National Guard (e.g., legal assistance issues, military justice
issues, and administrative law problems).
 - g. Comments. None.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AFZW-JA

SUBJECT: After Action Report for Joint Task Force - Los Angeles

4. Second Lesson Learned.

a. Keywords. Rules of Engagement (ROE), Arming Orders, Use of Force.

b. Title. Inconsistent Application of the Rules of Engagement.

c. Observation. Despite specific guidance from the JTF Commander, and with no articulable difference in threat, different units were found at varying arming order levels.

d. Discussion.

(1) The ROE developed for JTF-LA incorporated guidance from the Garden Plot OPLAN and amendments provided by FOKSCOM, existing ROE from the 40th ID(M) and the 7th ID(S), and AR 19C-14. The ROE were printed on easy-to-read "helmet cards" which were provided to every soldier of the task force.

(2) The arming order levels of Garden Plot were modified slightly to enhance command control and individual understanding that any escalation in the level of force would be taken in a measured and calculated manner. A column was added to the arming order table that specified when the magazine would remain in the pocket and when it could be inserted into the weapon.

(3) The JTF experienced problems with the application of the arming order levels. Most notable was the inconsistent application of the guidance. Although the JTF Commander specified that all personnel were to be at arming order level one under normal circumstances, some first line leaders applied arming order levels based upon their perceptions of the threat, despite the lack of articulable reasons justifying an elevated arming status. This was particularly true of the National Guard units, where at any given time, soldiers could be found from level one through level six.

(4) Directing the initial implementation of arming order level one was not intended to remove the discretion of leaders on the ground to employ a higher level actually warranted by the threat. However, the practical effect was to leave some first line leaders with the idea that they had to "take casualties before they could come off level one." The issue presented potentially significant morale problems.

e. Lessons Learned.

(1) A benefit of employing arming order levels is that it facilitates controlling the proper balance between the risk of unnecessary discharge of a weapon and the risk of an

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AF2W-1A

SUBJECT: After Action Report for Joint Task Force - Los Angeles

Inappropriate state of preparedness. This is particularly true in the early stages of the civil disturbance when tension levels are high.

(2) Experience in the threat environment is likely to reduce the level of tension and thereby reduce the risk of an improper discharge.

(3) Commanders must possess a clear picture of the threat, and must be able to make an honest appraisal of both their troops' experience in that environment and their level of training and discipline.

f. Recommendations.

(1) Arming order levels serve a very important purpose in civil disturbance operations, and should remain part of the Garden Plot OPLAN.

(2) The JTF-LA modification to the arming order table should be incorporated into the Garden Plot OPLAN.

(3) Realistic threat training is essential, so that commanders and first line leaders are better able to strike the balance between threat level and safety. The result will be a more consistent application of the arming order levels.

(4) Dissemination of the ROE must occur as early as possible, so that training and understanding can be achieved before actual deployment of troops.

g. Comments. None.

5. Third Lesson Learned.

a. Keywords. Military Justice, UCMJ, Jurisdiction, Title 10.

b. Title. Unique Military Justice Issues Presented by Federalization of the National Guard.

c. Observation. Federalization of the National Guard, especially for short-term civil disturbance operations, creates unique problems in the military justice arena.

d. Discussion.

(1) Federalization of the National Guard may create a jurisdictional gap for prosecution of offenses. When a soldier is notified of activation under Title 32 and fails to report, the Guard can handle the case using State judicial or nonjudicial procedures. When a soldier fails to report after federalization, the State procedures no longer apply. The offenses must be disposed of using Title 10 (UCMJ) procedures. However, a soldier cannot be considered ordered to active duty under Title 10, unless

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AFZW-1A

SUBJECT: After Action Report for Joint Task Force - Los Angeles

notified of the activation. A gap is created for offenses committed between the time of federalization and the time the soldier receives notification. In AWOL cases, that time would be lost for prosecution purposes.

(2) Civil disturbance operations that conclude quickly present difficult time constraints for processing military justice actions. The command must act quickly to either resolve the issue or reassign the soldier to a regular Army unit for disposition prior to defederalization. Failure to act timely may result in misconduct going unpunished.

(3) The time constraint problem is compounded by the lack of National Guard attorney familiarity with Title 10 military justice procedures. If JTF-LA is any barometer for the future, planners should expect civil disturbance operations to be concluded quickly, and there may not be adequate time to allow for a Title 10 learning curve.

(4) AR 27-10 specifies that only Trial Defense Service (TDS) attorneys can represent soldiers at special and general courts-martial. National Guard units, being state entities, do not have TDS counsel assigned. The TDS counsel must be provided from a Regular Army installation.

e. Lessons Learned.

(1) National Guard units must anticipate federalization and dedicate an attorney to remain current in Title 10 procedures. This will reduce the reaction time in handling military justice matters and can minimize the time lost in the jurisdictional gap.

(2) A decision must be made early as to whether soldiers will be transferred to the active duty installation where TDS counsel are available or TDS counsel will be brought to the area.

f. Recommendations.

(1) Each National Guard unit should dedicate an attorney, preferably a trial counsel, to remain current in Title 10 procedures. Training for the dedicated 'Title 10' attorney should include annual training (AT) with an active duty division SCA office.

(2) When civil disturbance operations are likely to be concluded quickly, TDS counsel should not be brought to the area. Rather, the soldier should be transferred to an active duty installation where TDS counsel is available and the case will be tried.

g. Comments. None.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AFZW-JA

SUBJECT: After Action Report for Joint Task Force - Los Angeles

6. Fourth Lesson Learned.

- a. Keywords. Military Property, Loan, Lease.
- b. Title. Unclear Guidance Regarding the Loan/Lease of Military Property.
- c. Observation. The guidance in Annex K of the Garden Plot OPLAN and AR 700-131 is not user-friendly.
- d. Discussion.

(1) The JTF received a number of requests for the loan of military equipment. For example, the Los Angeles Police Department requested the loan of 25 AN/PVS-7 night vision devices. This and other similar requests raised a number of issues that were not adequately addressed in Annex K of the OPLAN or by other regulatory guidance in this area.

(2) The first step in processing a loan or lease request is to identify the equipment category. The OPLAN and AR 700-131 divide the equipment into three broad categories for purposes of handling loan or lease requests. Determination of the category in which the equipment falls is critical because the level of approval authority is different for each category. For example, a JTF Commander may approve a loan or lease of Category Two equipment while the CINC must approve Category Three requests. However, the categories are vague, which results in the expenditure of considerable time and effort-ascertaining who should be the approval authority.

(3) AR 700-131 specifies that equipment provided to non-federal civilian agencies must be accomplished under a lease. 10 U.S.C. 2667 provides for the 'fair market value' in exchange for the use of the equipment and allows for 'in kind' payment for the lease of such equipment. However, this section lacks guidance on the computation of 'fair market value' of the consideration or the value of the 'in kind' services provided.

(4) Before leasing military property to a non-federal agency, the lessee must also provide a surety bond equal to the value of the equipment provided. In this case, LAPD would have been required to post a bond in excess of \$100,000.

(5) Finally, guidance as to the authority to actually sign the loan/lease agreement on behalf of the JTF is very unclear. The lease agreement indicates that the contracting officer has the authority to sign on behalf of the government, but there is no express statutory or regulatory authorization.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

AFZW-CA.

SUBJECT: After Action Report for Joint Task Force - Los Angeles

e. Lessons Learned.

(1) Equipment category identification is critical. Because guidance is lacking, the urge is to identify equipment as Category Two equipment, so that the JTF Commander is the approval authority. The problem can be solved by clarifying the equipment categories or by changing the approval authority to allow a JTF Commander greater latitude in approving equipment requests.

(2) A simple solution to the valuation problem would be to establish a reasonable percentage of the "fair market value" of the property as the consideration for the equipment provided. This would also simplify the computations of "in kind" services which might be used in exchange for the use of the equipment. Finally, the JTF Commander should be the approval authority for the acceptance of "in kind" payment and the necessary valuations.

(3) The surety bond is a major prohibitive factor for agencies requesting equipment that is essential to the protection of human life.

(4) The rules are not sufficiently flexible to accommodate timely action in civil disturbance operations.

f. Recommendations.

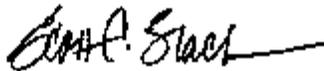
(1) The JTF Commander should be granted greater authority to approve equipment requests and the requisite consideration for the lease of property. For example, the NCA's JTF activation order could specifically grant the JTF Commander the authority to approve any and all necessary transactions/exceptions available to DoD or DA under 10 U.S.C. 2667.

(2) The equipment categories should be clarified.

(3) The regulation or statute should provide a mechanism for waiving the surety bond requirement in situations involving the protection of human life in civil disturbance operations.

(4) The regulation or statute should expressly state who has the authority to sign the loan/lease agreements on behalf of the government.

g. Comments. None.



SCOTT C. BLACK
MAJ. JA
Deputy Staff Judge Advocate

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

JTF-LA-JA

MEMORANDUM FOR JTF-LA JS

SUBJECT: Joint Task Force Los Angeles After Action Report --
(GARDEN PLOT) -- Staff Judge Advocate

1. Period of civil disturbance actions covered: 01 May 1992
through 7 May 1992.

2. Section I -- Significant Activities.

a. Deployment task organization. The standing roster for the 7th Infantry Division (Light) Assault Command Post (ACP) includes one Judge Advocate, recognizing that the remainder of the SJA assets would normally follow within 48 to 72 hours. For this operation, the ACP legal staff was increased by one additional attorney in anticipation of 24 hour operations in the JTF Headquarters. The additional lawyer was drawn from the Administrative and Civil Law Branch. As it turned out, the majority of the issues encountered during the operation fell in the area of administrative law.

b. The Marine Force (MARFOR) consisted of a special contingency Marine Air-Group Task Force (SPMAGTF). Personnel from the Command Element, I Marine Expeditionary Force (I MEF) were integrated into the JTF-LA Headquarters. One Marine Judge Advocate from I MEF was assigned to the JTF-LA and was appointed the JTF SJA.

c. There were no significant issues concerning our operations in the JTF-LA HQ.

3. Section II -- Problem Areas/Lessons Learned.

a. Federalization:

(1) On 1 May 1992, the President directed federalization of certain National Guard forces and the creation of a Joint Task Force to assist in civil disturbance operations. While the National Guard forces responded quickly, from a legal perspective, they appeared to be generally unprepared for the transition to federal service.

(2) The federalization process needs to be reworked. The Guard needs to develop SOPs which will allow a smooth transition, and they must understand the implications of federalization before it happens. Guard attorneys should know the benefits and understand the problems associated with transitioning their force to federal service. Many of the more common issues (e.g., legal assistance issues such as limitations on interest rates and reemployment rights) could be addressed in the Garden Plot OPLAN.

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JTF-LA-JA
SUBJECT: Joint Task Force Los Angeles After Action Report --
(GARDEN PLOT) -- Staff Judge Advocate

b. Military Justice.

(1) Jurisdictional gap.

(a) An issue remains concerning National Guard soldiers who were notified but failed to make the activation of their unit. If they fail to show after being activated under Title 32, the Guard handles the case using State judicial or nonjudicial procedures. However, where the soldier fails to show for the activation after federalization, the State procedures no longer apply. These offenses must be disposed of using Title 10 (UCMJ) procedures.

(b) If the soldier is under Title 32 and there is a subsequent federalization, the soldier may, under certain circumstances, be prosecuted under Title 10 procedures. In this instance, the soldier would have to be considered never to have been ordered to active duty in a Title 10 status. The unit would have to renotify him of the activation in a federal status, and then prefer charges if he fails to show up for duty. The time period between the initial State activation and federalization would essentially be lost for prosecution purposes.

(2) Time constraints for processing military justice actions prior to defederalization. When actual civil disturbance operations are concluded in a short time, misconduct which occurs during the period of federal service may go unpunished. The command must act quickly to either resolve the issue or reassign the soldier to a Regular Army unit for disposition of pending charges.

(3) Attorney familiarity with Title 10 procedures. Because Title 10 issues are seldom dealt with in the National Guard, a working knowledge of the mechanics of Title 10 is generally lacking. If this operation is any barometer for the future, planners should expect civil disturbance operations to be resolved quickly, and there may not be adequate time to allow for a Title 10 learning curve. National Guard units must anticipate the requirement and dedicate an attorney to remain current in Title 10 procedures.

(4) Defense counsel. AR 27-10 prevents other than USAFDS assigned attorneys from representing soldiers at special and general courts-martial. Assistance must be obtained from the commander exercising general court-martial jurisdiction. In civil disturbance operations, a decision as to whether the soldier is transferred to the active duty installation where TDS counsel are available or TDS counsel is brought to the area must be made. The length of the federalization is a key factor in the determination.

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

JTF-LA-3A

SUBJECT: Joint Task Force Los Angeles After Action Report --
(GARDEN PLOT) -- Staff Judge Advocate

c. Rules of Engagement.

(1) ROE drafting and approval. The ROE developed for JTF-LA operation incorporated guidance from the existing Garden Plot OPLAN and amendments to that guidance as provided by FOSCOM, existing ROE from AOID (M) and 710 (L), and AR 170-14. Application of the arming order levels generated significant attention.

(2) The ROE provided in FAR A (Special Orders) to Appendix B (Special Instructions) to Annex C of the Garden Plot OPLAN were modified to simplify the language to ensure understanding by all personnel involved in the execution of the OPLAN. These ROC were printed on a "helmet card" which was provided to all personnel.

(3) During the drafting process, the arming order levels of the Garden Plot OPLAN were modified slightly. The intent was to enhance command control as well as the individual's understanding of the need to ensure that any escalation in the level of force would be taken in a measured and calculated manner. A specific change for the JTF-LA operation was the addition of a new column to the arming order table. The additional column specifies when the magazine must remain in the pouch and when it can be inserted in the weapon.

(4) The JTF experienced problems with the application of the arming order levels. Most notable was the inconsistent application of the guidance. Although the JTF Cdr specified that all personnel were to be at arming order level one under normal circumstances, some first line leaders applied arming order levels based upon their perceptions of the threat despite the lack of articulable circumstances justifying an elevated arming status. This was particularly true among the National Guard units, where at any given time, soldiers could be found from levels one through six.

(5) The Regular Army and Marine units of the JTF were more likely to be in compliance with arming order level one, although exceptions to that observation were also noted.

(6) On the other hand, directing the initial implementation of arming order level 1 was not intended to remove the discretion of leaders on the ground to employ an arming level warranted by the actual threat. The practical effect was to leave some first line leaders with the perception that they had to "take casualties before they could come off of level one." The issue presents potentially significant morale problems.

(7) It would seem that an unstated, but nevertheless essential, benefit to be gained from employing arming order

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JTF-LA-04

SUBJECT: Joint Task Force Los Angeles After Action Report --
(BARDEN PLOT) -- Staff Judge Advocate

level is to achieve a delicate balance between the risk of unnecessary discharge of a weapon, a negative impact on morale, and the attempt to ensure a state of preparedness consistent with the threat. This is particularly true in the early stages of the civil disturbance when tensions are running high.

(8) Experience in the threat environment is likely to reduce the level of tension and thereby the risk of an improper discharge. In addition, realistic threat training would also be likely to reduce the chances of accidental or improper discharge.

(9) Ultimately, battalion and company level commanders must be aware of the balancing process involved in designating arming order levels. Commanders must possess both a clear picture of the threat and an honest appraisal of both their troops' experience in that environment and their level of training and discipline.

d. Loan/Lease of Military Property.

(1) The JTF received a number of requests for the loan of military equipment. For example, the Los Angeles Police Department requested the loan of 25 AN/PVS-7 night vision devices (the request was later reduced to 15). This and other similar requests raised a number of issues that were not adequately addressed in Annex K of the OPLAN or by regulatory guidance in this area.

(2) The first step in processing a loan or lease request is to identify the equipment category. The OPLAN and regulation (AR 700-131) divide equipment into three broad categories for purposes of handling loan or lease requests. Determination of the category in which the equipment falls is critical because the level of approval authority is different for each category. For example, a JTF commander may approve the loan or lease of Category Two equipment while the CINC must approve Category Three requests. However, the categories are vague, which result in the expenditure of considerable time and effort to determine who should be the approval authority. The problem can be solved by clarifying the equipment categories, or by changing the approval authority to allow a JTF commander to approve Category Three requests.

(3) AR 700-131 provides that equipment provided to non-federal civilian agencies must be accomplished under a lease. 10 USC 2667 provides for the "fair market value" in exchange for the use of the equipment and allows for "in kind" payment for the lease of such equipment. However, this section lacks guidance on the computation of "fair market value" of the consideration or the value of the "in-kind" services provided. A simple solution would be to establish a reasonable percentage of the "fair market

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JTF-LA-JA

SUBJECT: Joint Task Force Los Angeles After Action Report --
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value" of the property as the consideration for the equipment provided. This would also simplify computations of "in-kind" services which might be used in exchange for the use of the equipment. Finally, the JTF commander should be the approval authority for the acceptance of "in-kind" payment and the necessary valuations.

(4) Before leasing military property to a non-federal agency, the lessee must also provide a surety bond equal to the value of the equipment provided. In this case, LAFD would have been required to post a surety bond of about \$90,000, the value of 15 sets of night vision goggles. The regulation and statute should provide a mechanism for waiving the surety bond requirements in situations involving the protection of human life in civil disturbance operations.

(5) Finally, guidance as to the authority to actually sign the loan/lease agreement on behalf of the JTF is very unclear. The lease agreement indicates that the contracting officer has the authority to sign on behalf of the government, but there is no express statutory or regulatory authorization.

e. Legal Assistance requirements. Federalization of the National Guard units predated Guard soldiers with a number of legal assistance problems. These include issues such as reemployment rights, reduction of rate of interest on financial obligations, and landlord-tenant rights. While these topics were thoroughly explored during Desert Storm, the legal staff of the 40ID (M) did not participate in that operation and they were not prepared to respond to soldiers at the outset of this operation. While the 40ID (M) SJA moved quickly to get up to speed in this area, the short duration of this operation did not allow for any learning curve. We need to get the Guard better prepared for these contingencies.

Richard G. Walls
RICHARD G. WALLS
Colonel, USMC
Staff Judge Advocate

7 May 92

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

CIVIL DISTURBANCE OPERATIONS

INTRODUCTION

Early in the morning of May 1, 1992, President Bush ordered the federalization of California National Guard units, and the deployment of 7th Infantry Division (Light) soldiers and U.S. marines into the Southern California area to assist in quelling the Los Angeles riots.¹ The civil disturbance had exceeded the capabilities of local law enforcement officials, and the news services were filled with compelling and graphic stories from what had become an urban battleground.

The concerted efforts of civilian law enforcement personnel, coupled with National Guard and Regular military personnel, ultimately brought the situation to a peaceful resolution. All Regular Army and U.S. Marine forces returned to home stations by May 15, and by the end of the month, the majority of National Guard forces were home.

A significant amount of material has already been written on various topics associated with the Los Angeles civil disturbance operations. Probably the most in-depth review can be found in the two volume Report by the Special Advisor to the Board of Police Commissioners on the Civil Disorder in Los Angeles.² Other articles of note have focused on the role of the National Guard in the crisis,³ and issues related to the creation and use of the JTF-LA rules of engagement.⁴

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

The onset of the riots has been generally attributed to the public reaction to the acquittal of the four Los Angeles Police officers accused of using excessive force during the arrest of Rodney King.⁵ The retrial of those officers on new charges based upon violations of Federal Civil Rights statutes raised the specter of the Los Angeles Riots - Part II.⁶ Equally as volatile is the Lopez trial taking place in Orlando, Florida.⁷

The purpose of this article is to provide, from the perspective of the lawyers assigned to Joint Task Force - Los Angeles, a practitioner's view of the significant events and lessons learned.⁸ Discussion will cover the legal basis for involvement of the armed forces, impact of the Posse Comitatus Act,⁹ federalization of the National Guard, legal staffing and support, the application of Arming Orders within the Rules of Engagement, military justice, and loan or lease of military property.

A. LEGAL BASIS FOR MILITARY INVOLVEMENT

The United States Constitution requires the Federal government to "...guarantee to every state...a republican form of government, and [to] protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence."¹⁰ Specific authority for the commitment of military forces to a civil disturbance is codified in Chapter 15, Title 10, United States Code.¹¹

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

The process for introducing military force into the Los Angeles riots began on April 29, when California's Governor Pete Wilson ordered the mobilization and deployment of California National Guard troops. The Guardsmen responded quickly and were actually on the streets of Los Angeles by early afternoon Thursday, April 30.¹²

Notwithstanding the rapidity of the National Guard response, there was evidently concern in the Governor's office about the number of civilian law enforcement personnel and National Guard soldiers available to control the disturbances. The Governor addressed these concerns at a 0300 staff meeting May 1, and discussed the rationale for requesting federal troops as added insurance for the National Guard.¹³

The first prerequisite for the commitment of Federal military forces into the Los Angeles area was satisfied later that morning when Governor Wilson advised President Bush that the domestic violence and disorder had exceeded the capabilities of available law enforcement resources, including the National Guard. Governor Wilson requested Federal assistance in suppressing the violence and restoring law and order in the area.¹⁴

As required by statute,¹⁵ the President issued a Proclamation commanding all persons engaged in acts of violence and disorder to cease and desist therefrom and to disperse and

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retire peaceably forthwith.⁶ The President then signed an executive Order providing for the federalization and use of National Guard troops, and the deployment of active duty forces. Military forces were to be used to suppress the violence and restore law and order in the City and County of Los Angeles.¹⁷

The 7th Infantry Division (Light) received a FORSOME warning order at about 0330 local time, May 1. Although the President did not actually commit active forces until approximately 0500 that morning, preparations were well under way to deploy the force. By 1800 that evening, the JTF Headquarters was up and functioning at Los Alamitos Army Reserve Center in Los Angeles, staffed by active duty Soldiers and Marines.

Soldiers from the 2d Brigade, 7th ID(L) and Marines from I Marine Expeditionary Force (I MEF) at Camp Pendleton were staged at Marine Corps Air Station El Toro (MCAS) and MCAS - Tustin, where they began intensive training in civil disturbance operations.¹⁸ Although their presence in the Los Angeles area was highly publicized, the first active duty personnel did not actually deploy into the streets until Saturday, May 2.¹⁹

B JTF-LA EJA ORGANIZATION

PERSONNEL

The nucleus for the JTF-LA staff was drawn from the 7th Infantry Division (Light) Assault Command Post (ACP). The standing roster for the 7th Infantry Division (Light) ACP

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

includes one Judge Advocate, with the understanding that the remainder of the SJA assets will normally flow into the area of operations with the balance of the Division Staff within 48 to 72 hours.

For this operation, the remainder of the Division Staff was not likely to follow-on. Accordingly, the ACP legal staff was increased by one additional attorney in anticipation of extended 24-hour operations in the JTF headquarters. The additional lawyer was drawn from the Administrative and Civil Law Branch. As it turned out, the majority of the issues encountered during the operation fell in the area of administrative law. A third attorney accompanied the Brigade Task Force into the streets to provide both training and legal support.

The relatively austere Division ACP structure²⁰ was significantly enhanced when U.S. Marines from the Command Element, I MEF were integrated into the JTF LA Headquarters. This included one Marine Corps Judge Advocate from I MEF who was assigned to JTF-LA and served as the JTF Staff Judge Advocate. Additionally, another Marine Corps Judge Advocate was assigned to the contingency Marine Air Ground Task Force (MAGTF) which was assigned as the Marine Corps component to JTF-LA.

REFERENCE MATERIALS

As might be imagined, planning operational equipment needs is greatly simplified if you are deploying tactically within

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CONUS. However, there are a few specific civil disturbance reference materials which should supplement your standard deployment library, including the following:

1. JOD Civil Disturbance Plan (Garden Plot), 15 Feb 91.
2. AR 600-131, Loan of Army Materiel, 15 Feb 85.
3. AR 600-50, Civil Disturbances, 21 Apr 72.
4. AR 600-51, Support to Civilian Law Enforcement, 1 Aug 83.
4. FM 19-15, Civil Disturbances, 25 NOV 85.

C. POSSE COMITATUS?

The impact of the Posse Comitatus Act on the operations of the JTF is a topic which has seen considerable comment, much of it inaccurate. For example, the Report by the Special Advisor concluded that the JTF Commander was "apparently unfamiliar with the President's Proclamation and erroneously believed that federal troops were prohibited from becoming involved in law enforcement functions under the federal Posse Comitatus Act."²¹ This is absolute nonsense.

Federal military forces are normally proscribed by the Posse Comitatus Act²² from engaging or assisting in civilian law enforcement activities. However, the President's authority to order Federal troops into use to control a civil disturbance is specifically exempted from those restrictions.²³ Accordingly, the JTF-LA commander was free (subject to limitations that could

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

have been set by the Attorney General) to use his force in any capacity, including typical law enforcement functions.

The fact of the matter is that, like any military operation, operational decisions at the JTF level were made consistent with the commander's intent and the capabilities of the available forces. These decisions included the determination to employ military forces in such a manner to ensure that they remained under the control of their military leaders rather than a "piecemeal" employment under the control of individual members of the Los Angeles Police Department.

The JTF commander and his staff understood from the outset that the Posse Comitatus Act had no effect, and the Act in no way limited the decision-making process within the JTF Headquarters.³⁴ There simply was no confusion at the JTF level about the possible effect of the Act.³⁵ Further evidence of this lack of confusion is contained in the "helmet card" providing the rules of engagement. This card included the direction "when possible, let civilian police arrest law breakers." From a "lessons learned" standpoint, Judge Advocates should be wary of issues that over the years have become so ingrained in the minds of our soldiers as to limit their ability to recognize or accept the infrequent exception.

D. FEDERALIZATION OF THE NATIONAL GUARD

The federalization of the National Guard forces raised many

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

difficult issues. These were all the more problematic because participating Active and Guard lawyers had not trained or properly planned for the process. However, this experience has provided a number of valuable lessons regarding the transition to Federal service.

Although criticized in some circles,³⁶ the California Army National Guard forces responded to the call up with a great deal of enthusiasm for their task. By happenstance, guidance for the conduct of civil disturbance operations had been recently issued. The California National Guard Emergency Procedures Manual³⁷ provided specific instructions for dealing with civil disturbance contingencies.

California National Guard attorneys had obviously played a role in drafting the Emergency Procedures Manual, particularly with respect to issues involving security measures,³⁸ the application of force,³⁹ and arming orders.³⁰ However, the Manual did not contain a separate legal annex, and provided no guidance for the conversion to Federal status.

While the CARMG Judge Advocates were on the scene right from the outset, they did not have the training to make a rapid transition to federal service. Most of the Guard attorneys had some active service experience, however, their familiarity with Title 10 procedures was significantly degraded.³¹

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This issue of legal preparedness is one that should be addressed now because the National Guard will get little or no warning prior to Federalization, and may not have time to get smart in Title 10 issues before they are returned to State status.³² Consequently, National Guard Judge Advocates should always be prepared for Federalization, with Standard Operating Procedures in place to facilitate a smooth transition. Many of the more common issues (e.g., legal assistance issues such as reemployment rights and Soldiers and Sailors Civil Relief Act benefits) should also be addressed in the DoD Garden Plot OPLAN.

In addition, Guard Staff Judge Advocates should consider dedicating an officer to gaining and maintaining Title 10 expertise. This officer could do annual training with an active duty unit, serve as the proponent for the unit training program, and serve as the action officer for transitioning the force to active federal status.

Finally, the active duty contingent was equally unprepared for recognizing and handling State status issues. For the future, we should consider the addition of an annex to the Garden Plot OPLAN, highlighting the key legal implications of federalizing the National Guard (e.g., legal assistance issues, military justice issues, and administrative law problems).

E. ARMING ORDERS AND THE RULES OF ENGAGEMENT

The development and implementation of the JIF Rules of

This issue of legal preparedness is one that should be addressed now because the National Guard will get little or no warning prior to Federalization, and may not have time to get smart in Title 10 issues before they are returned to State

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

Engagement (ROE) also presented a number of interesting issues.³³ The ROE incorporated guidance from the Carden Plot OPLAN and amendments provided by FORSCOM, existing ROE from the 40th ID(M) and the 7th ID(L), and AR 190-14. The ROE were printed on easy-to-read "helmet cards" which were provided to every soldier and Marine of the task force.

The ROE included Arming Orders, which provided six levels of specific arming guidance for soldiers and Marines.³⁴ Level one was the least aggressive posture³⁵ and level six the most aggressive posture.³⁴ Use of the arming order levels helped the commander maintain a proper balance between the risk of an unnecessary discharge of a weapon and the risk of being caught unprepared in a dangerous situation. This was particularly true in the early stages of the civil disturbance when tension levels were high. Implementation of the arming orders was designed so that the Officer in Charge (OIC) or Noncommissioned Officer in Charge (NCOIC) "on the ground" would have the ultimate authority to determine the appropriate level within the arming orders.

However, the JTF did experience problems with the application of the arming order levels. Most notable was the inconsistent application of the guidance. Although the JTF Commander specified that all personnel were to be at arming order level one under normal circumstances, some first line leaders applied arming order levels based upon their perceptions of the threat, this despite the lack of articulable reasons justifying

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

an elevated arming status. This was particularly true of the National Guard units, where at any given time, soldiers could be found from level one through level six without apparent reason for the difference.

Directing the initial implementation of arming order level one was not intended to remove the discretion of leaders on the ground to employ a higher level actually warranted by the threat. However, the practical effect was to leave some first line leaders with the impression that they had to take casualties before they could escalate above level one. The issue presented potentially significant morale problems.

The problem can be minimized first by early dissemination of the ROE. Commanders can then engage in realistic threat training. First line leaders need to practice striking the proper balance between threat level and safety in a civil disturbance environment. Given such training, the result should be a more consistent application of the arming order levels, and a safer, more efficient force overall.

F. MILITARY JUSTICE

Federalization of the National Guard, especially for a relatively short-term civil disturbance operation, creates many unique issues in the military justice arena. Perhaps at the top of the list, federalization created jurisdictional gaps which affected the prosecution process.

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The jurisdictional gap is exemplified best in AWOL and missing movement cases. When a soldier is notified of activation under Title 32 of the United States Code and fails to report, the Guard can handle the case using state judicial or nonjudicial procedures. When a soldier fails to report after federalization, the State procedures no longer apply. The offenses must be disposed of using Title 10 (UCMJ) procedures. However, a soldier cannot be considered ordered to active duty under Title 10, unless notified of the activation.³⁷ A gap is created for offenses committed between the time of federalization and the time the soldier receives notification. In AWOL cases, that time would be lost for prosecution purposes.³⁸

Another problem created by short-term Federalization is that units are faced with difficult time constraints for processing military justice actions. The command must act quickly to either resolve the issue or reassign the soldier to a regular Army unit for disposition prior to defederalization.³⁹ Failure to act timely may result in misconduct going unpunished.

The time constraint problem is compounded by the lack of National Guard attorney familiarity with Title 10 military justice procedures. If JTF-LA is any barometer for the future, planners should expect civil disturbance operations to be concluded quickly, and there may not be adequate time to allow for a Title 10 learning curve. Again, dedicating an attorney to

APPENDIX 5: CIVIL DISTURBANCE OPERATIONS

remain current in Title 10 procedures can alleviate some of the problems created by time constraints.

Another significant problem is the availability, or lack thereof, of Trial Defense Service (TDS) attorneys. AR 27-10 specifies that only TDS attorneys can represent soldiers at special and general courts martial.⁴⁰ National Guard units do not have TDS counsel assigned. Therefore, TDS counsel must be provided from a Regular Army installation. Anticipating that the operation would be of short duration, the decision was made not to deploy TDS personnel.⁴¹ The need, of course, arose and proper arrangements for TDS counsel were made.

G. LOAN OF MILITARY PROPERTY

The JTF received a number of requests for the loan of military equipment. For example, the Los Angeles Police Department (LAPD) requested the loan of 25 AN/PVS-7 night vision devices. This and other similar requests raised a number of issues that were not adequately addressed in the Garden Plot OPLAN or by other regulatory guidance in this area.⁴²

The first problem in this area involved the classification of materiel. The OPLAN and AR 700-131 divide equipment into three broad categories for purposes of handling loan or lease requests.⁴³ The categories are extremely vague.⁴⁴ However, determination of the equipment category is critical because the level of approval authority is different for each category. For

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example, a JTF Commander may approve a loan or lease of Category Two equipment while only the CINC (or higher) may approve Category Three requests.⁴³

In the absence of specific guidance, and in an effort to "keep things moving," the tendency is to classify materiel as Category Two equipment, so that the JTF Commander is the approval authority. While this is expedient, it does not leave the Judge Advocate feeling as though the commander is properly protected. For the future, the issue could be resolved by clarifying the equipment categories or by changing the approval authority to allow a JTF Commander greater latitude in approving equipment requests.⁴⁶

A second significant issue in this area involved the AR 700-131 requirement to accomplish such loans of equipment to non-federal civilian agencies via a lease.⁴⁷ The lessee must pay the "fair market value" in exchange for the use of the equipment and allows for "in kind" payment for the lease of such equipment.⁴⁸ However, this section does not provide guidance on the computation of "fair market value" of the consideration or for the value of the "in kind" services provided. Judge Advocates and logisticians are left to guess as to how to properly assess the value of the Federal government interest in the property.

A simple solution to the valuation problem would be to

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establish a reasonable percentage of the "fair market value" of the property as the consideration for the equipment provided. This would also simplify the computations of "in kind" services which might be used in exchange for the use of the equipment. In addition, the JTF Commander should be the approval authority for the acceptance of "in kind" payment and the necessary valuations.

Continuing along the same line, a non-federal agency lessee must also provide a surety bond equal to the value of the equipment provided.⁴⁹ For example, the LAPD request for night vision devices required posting a bond in excess of \$100,000. As might be expected, the bureaucracy involved in processing such a request can be a significant problem.

In our JTF-LA night vision device example, the LAPD no longer needed the equipment by the time the request was successfully processed. Additionally, there was reluctance by the Los Angeles Police Department to obligate the City under the requested surety bond. This problem could be avoided by revising the regulation to provide a mechanism for waiving the surety bond in such emergency situations as civil disturbance operations.

Finally, guidance as to the authority to actually sign the loan/lease agreement on behalf of the JTF is very unclear. The standard lease agreement⁵⁰ indicates that the contracting officer has the authority to sign on behalf of the government, but there is no express statutory or regulatory authorization.

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The regulation should be revised to specify who has the authority to sign such loan/lease agreements on behalf of the government.

H. CONCLUSION

Civil disturbance operations present issues unlike any others we may find in our roles as military lawyers. You may literally end up providing advice to soldiers who going into "combat" in their hometown. Advice and assistance must account for this and be tempered to accommodate not just the mission, but the thoughts and concerns of the individual soldier or Marine on the streets.

The civil disturbance operation moves quickly; it may well be over before you have time to get smart on the peculiarities of working in such an environment. Once again, the intent here is to provide an overview of practical legal issues and concerns in the civil disturbance environment, and to suggest potential solutions for those who will receive the next order to deploy tactically within the borders of our country.

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personnel were given in-depth classes on the Rules of Engagement by Judge Advocates. Moreover, the heavy media presence was factored into the training program. Commanders developed creative training scenarios and skills designed to accustom their troops to performing their jobs in a media intensive environment.

19. The City in Crisis, supra note 2, at 153.

20. The 7th ID(L) Assault Command Post (ACP) was conceived during the planning for Operation Just Cause and has evolved into the Division's contingency command and control node. With a baseline configuration of sixty-one personnel and twelve vehicles, it is transportable in two C141B sorties and can provide all of the resources necessary for command and control of Division operations. See, Memorandum, AFZW-CS, Headquarters, 7th Infantry Division (Light) and Fort Ord, subject: Assault Command Post (AC?) Standing Operating Procedures (17 Jul 92).

21. The City in Crisis, supra note 2, at 153.

22. 18 U.S.C. 1385 (1984).

23. 10 U.S.C. 321 (1983).

24. The Report by the Special Advisor also stated that "Federalization thus had a seriously dilatory impact on the responsiveness by the California National Guard due to the mistaken impression that the Posse Comitatus Act prohibited the Guard from engaging in law enforcement activities." The City in Crisis, at 154. The Report concluded that military commanders were uniformly denying requests for assistance that involved a law enforcement function, in order to avoid a potential violation of the Posse Comitatus Act. More nonsense!

25. However, it does appear that not everyone in the JTF clearly understood the role of the military and the methods adopted by the JTF commander and his staff for making operational decisions. For example, the Delk article states that key decisions makers did not realize differences in support after federalization, and that the impact of Posse Comitatus had not been considered. Delk, supra note 3, at 17.

He also states that "we later met with key officials and produced a matrix to make the changes clear." The matrix purported to set forth civil disturbance tasking guidelines, providing a listing of appropriate and inappropriate functions, further delineated by annotating each function as either State or Federal and whether the function amounted to restoring or preserving law and order, or both. Although not seen at the JTF Headquarters level, this matrix may have actually been used by the staff of 40th ID(M)(CARG). As an aside, MG Delk does not say who represented the JTF command group at the matrix formulation meeting. The JTF Staff Judge Advocate was not invited.

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26. See, e.g., Los Angeles Times (Wash. Ed.), Dec. 3, 1992, at 1, Report on LA Riots Blasts National Guard (referring to a study conducted by LTC William H. Harrison (USA, Ret.) at the request of Governor Wilson).

27. The California National Guard Emergency Procedures Manual (CNG EDM) was in final draft format and out for staffing under memorandum dated 1 April 1992. This draft manual provided the basic guidance that National Guard commanders utilized during the disturbance.

28. Id. at 5-8.

29. Id. at 6-6.

30. Id. at 6-7.

31. National Guard attorneys do not have many opportunities to work in a Title 10 environment and their own State systems can be so different it makes the transition to active duty extremely difficult for Guard Judge Advocates.

32. The period of Federalization during the Los Angeles riots lasted only ten days.

33. For an excellent discussion of the development of the JTF-LA ROE and Arming Orders, see Rolpt, supra note 3.

34. These arming orders were adapted from similar guidance contained in the California National Guard Emergency Procedures Manual.

35. At Arming Order level one, the rifle is at sling, the bayonet in the scabbard, and ammunition is in the magazine and secured in the pouch.

36. At Arming Order level six, the rifle is at port, the bayonet fixed, and ammunition is in the magazine, locked and loaded.

37. Uniform Code of Military Justice arts. 85, 86, and 87, 10 U.S.C. 385, 386, and 387 (1988).

38. Federalization occurred on 1 May 1992. Soldiers who failed to report for State duty, and subsequently failed to report for Federal duty, could evade prosecution for the AWOL period between 1 May 92 and the notification date.

39. Dept't of Army, Reg. No. 27-10, Local Services - Military Justice, para. 21-4 (22 December 1989) authorizes extending Reserve Component soldiers on active duty. If a soldier is allowed to return to State status or is otherwise released from active duty, para. 21-3 provides a mechanism for involuntarily recalling

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soldiers to an active duty status. In reality, though, the procedure is exercised in only the most serious cases.

40. Id. at paras. 5-5, 6-7 and 6-9.

41. Organization of the Assault Command Post and the relative geographic availability of TDS personnel were also considered in making this decision.

42. See generally, Dep't of Army Reg. No. 700-131, Loan and Lease of Army Materiel (15 February 1985) [hereinafter cited as AR 700-131] and Dep't of Army Reg. No. 500-51, Support to Civilian Law Enforcement (1 August 1983) [hereinafter cited as AR 500-51].

43. AR 700-131, para. 2-5b and GARDEN PLOT OPLAN, Annex K, para 1a. Although AR 500-50 addresses the loan of military property to state and local law enforcement agencies, the procedures were generally ignored because they conflicted with 10 U.S.C. 2667 and more recent provisions in AR 700-131.

44. For example, Group Two contains "riot control agents, concertina wire, and other like equipment..." During JTF-LA, classifying night vision devices into one of the three categories was particularly difficult because the other two groups were equally as vague.

45. AR 700-131, para 2-5b and GARDEN PLOT OPLAN, Annex K, para 5.

46. For example, the National Command Authority JTF activation order could specifically grant the JTF Commander the authority to approve any and all necessary transactions or exceptions available to DoD or DA under 10 U.S.C. 2667.

47. AR 700-131, para 2-4.

48. 10 U.S.C. 2667 (1992).

49. See AR 700-131, para. 2-7 and DA Form 4381-3-R (Sep 84).

50. Id. at para. 2-5b and GARDEN PLOT OPLAN, Annex K.