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Defense Primer: Defense Support of Civil Authorities

Introduction

The U.S. military has a long history of providing support to civil authorities, particularly in response to disasters, but for other purposes as well. The Defense Department currently defines *defense support of civil authorities* as “Support provided by U.S. Federal military forces, DOD civilians, DOD contract personnel, DOD Component assets, and National Guard forces (when the Secretary of Defense, in coordination with the Governors of the affected States, elects and requests to use those forces in title 32, U.S.C., status) in response to requests for assistance from civil authorities for domestic emergencies, law enforcement support, and other domestic activities, or from qualifying entities for special event.” (DOD Directive 3025.18).

Defense support of civil authorities in response to disasters is typically carried out in accordance with the National Response Framework (NRF), which is a structure of preparedness that guides the nation in responding to domestic disasters and emergencies. The NRF is always in effect and its structures, roles, and responsibilities can be partially or fully implemented in response to a threat or hazard. It aims to produce a scaled response with appropriate coordination. Under the NRF framework, local and state governments are expected to put forth their best effort during incidents within their jurisdiction. They should only request federal assistance when their resources are overwhelmed. At that point, DOD may provide support in response to the Request for Assistance (RFA), typically as part of a broader federal response.

Examples of Defense Support of Civil Authorities

Historically, defense support of civil authorities has been used in situations such as:

- Response to natural disasters
- Special events, such as presidential inaugurations
- Border security
- Oil spill response
- The COVID-19 response

For example, in 2017 DOD supported the federal government response to four disasters that occurred between August and December: Hurricanes Harvey, Irma, and Maria, and wildfires in California. DOD personnel supported the response by providing food, water, fuel, power and medical support.

Another example of defense support of civil authorities has been DOD’s deployment of active duty personnel to the southwest border in support to the Department of Homeland Security. The active duty personnel have performed a variety of missions including ground and aerial surveillance, road and fencing construction, transportation,

maintenance, and communications support. National Guard personnel operating under the control of border state governors are providing similar support.

Defense support of civil authorities in response to the COVID-19 pandemic is discussed in CRS Insight IN11305, *COVID-19: Defense Support of Civil Authorities*.

Request for Assistance

There are two distinct methods to initiate defense support of civil authorities: a *request for assistance* (RFA) from civil authorities, or the direct authorization of the President or Secretary of Defense. An RFA from civil authorities will come from the lead federal agency (such as the Federal Emergency Management Agency), and in some cases will be validated by a Defense Coordinating Officer (DCO). DCOs are assigned to the multi-agency coordination centers (joint field offices) established at domestic emergency incident sites. **Figure 1** depicts how RFAs are generally processed, although requests may have nuances that can create variations in the RFA process.

DOD evaluates requests based on six criteria:

- **Legality:** compliance with the law
- **Lethality:** potential for use of lethal force by or against DOD personnel
- **Risk:** safety of DOD personnel
- **Cost:** source of funding and effect on the DOD budget
- **Readiness:** impact on DOD’s ability to perform its primary mission
- **Appropriateness:** whether providing the support is in the interest of DOD

If the request is granted, DOD will coordinate with the requesting agency, FEMA, on-scene personnel and/or other response partners to determine the support to be provided.

Immediate Response Authority

In certain circumstances, it may not be possible to secure timely approval for an RFA through the normal channels described above. In these cases, military commanders and certain DOD civilians have the authority to immediately respond to requests for assistance from a civil authority “to save lives, prevent human suffering, or mitigate great property damage within the United States.” (DOD Directive 3025.18)

The official directing the response must notify the National Joint Operations and Intelligence Center of the details of the response and reassess the situation no later than 72 hours after receiving the request to determine if continued DOD support is necessary.

Control of Armed Forces and National Guard

While active duty forces are under command and control of the President, National Guard forces remain under the command and control of their state or territorial governor unless called into federal service. Both groups can be used in defense support of civil authority operations. When both active duty and National Guard personnel are used in response to an incident, DOD may appoint a dual-status commander at the request of the governor. The dual-status commander acts within both chains of command, relaying orders from the federal chain of command to federal military forces and from the state chain of command to National Guard forces.

Laws and Policy Guidance

The Robert T. Stafford Disaster Relief and Emergency Assistance Act is the statutory authority for disaster relief of both natural disasters and human-caused incidents. It authorizes the President to issue a major disaster declaration or an emergency declaration, which are both decisions to provide federal aid. The act allows federal assistance to be given quickly to states and localities.

The Economy Act provides authority for federal agencies to order goods or services from other federal agencies provided the “ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.” (10 U.S.C. §1535) This permits an agency to request DOD support in situations other than those outlined in the Stafford Act.

Military Support to Civilian Law Enforcement Agencies provisions (10 U.S.C. §§271-284) authorize certain types of military support to civilian law enforcement officials and agencies. In specified circumstances, support may include use of military equipment and facilities, training and advising, maintenance and operation of equipment, support for counterdrug activities, and support for activities to counter transnational organized crime.

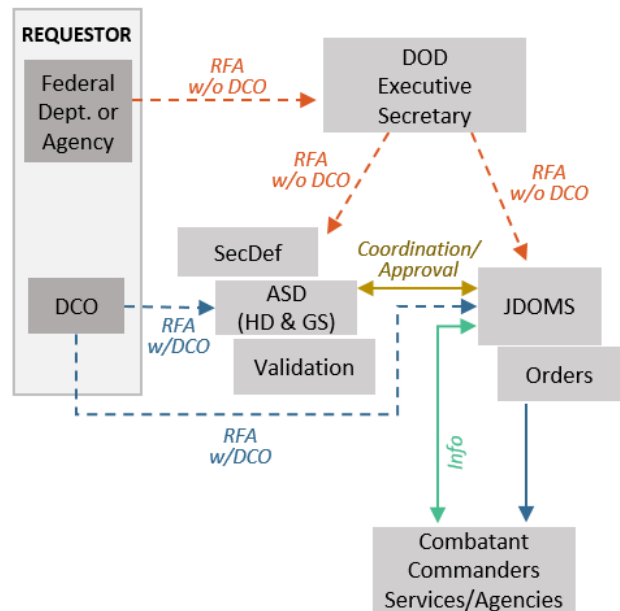
The Posse Comitatus Act restricts the extent to which DOD personnel can be involved in civilian law enforcement activities. Generally prohibited activities include search, seizure, and arrest.

DOD Directive 3025.18 is the DOD regulation governing defense support of civil authorities, setting policies such as assignment of responsibility, and criteria for handling requests.

Reimbursement

Reimbursement of the costs of providing this type of support varies according to the requirements contained in the statutory authorities involved and the decisions of the President or Secretary of Defense. DOD considers reimbursable costs to include those associated with cost of additional hiring, overtime, travel, consumables, fuel, and damage of supplies. Nonreimbursable activities include normal training and operating costs such as regular pay and allowances of personnel, benefits, and administrative overhead.

Figure 1. The Request for Assistance (RFA) Process



Evaluation Criteria: Legality, lethality, risk, cost, readiness, appropriateness

ASD (HD&GS): Assistant Secretary of Defense for Homeland Defense and Global Security; **DCO:** Defense Coordinating Officer; **DOD:** Department of Defense; **JDOMS:** Joint Director of Military Support; **JFO:** Joint Field Office; **RFA:** Request for Assistance; **SecDef:** Secretary of Defense

Note: Approval authority for some RFAs has been delegated to the commanders of U.S. Northern Command and U.S. Indo-Pacific Command.

Source: Adapted from Joint Publication 3-28, Defense Support of Civil Authorities, September 14, 2007, Figure II-1.

Possible Future Applications

The Government Accountability Office (GAO) published a report in April of 2016 assessing DOD’s plans for providing defense support of civil authorities in response to a domestic cyber incident and recommending updated guidance to clarify roles and responsibilities of key organizations and officials.

Other Resources

Department of Defense Directive 3025.18, Defense Support of Civil Authorities (DSCA), December 29, 2010
 Joint Publication 3-28, Defense Support of Civil Authorities, October 29, 2018

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