

**DEPARTMENT OF THE INTERIOR****National Indian Gaming Commission****25 CFR Part 558**

RIN 3141-AA15

**Tribal Background Investigations and Licensing****AGENCY:** National Indian Gaming Commission, Interior.**ACTION:** Technical amendment.**SUMMARY:** The National Indian Gaming Commission (NIGC or Commission) is revising its gaming license regulations to correct a section reference in one of its rules.**DATES:** Effective: April 29, 2013.**FOR FURTHER INFORMATION CONTACT:** John Hay, National Indian Gaming Commission, 1441 L Street NW., Suite 9100, Washington, DC 20005. Email: [john\\_hay@nigc.gov](mailto:john_hay@nigc.gov); telephone: 202-632-7009.**SUPPLEMENTARY INFORMATION:****I. Background**

The Indian Gaming Regulatory Act (IGRA or the Act), Public Law 100-497, 25 U.S.C. 2701, et seq., was signed into law on October 17, 1988. The Act established the NIGC and sets out a comprehensive framework for the regulation of gaming on Indian lands. The Act provides a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments. To ensure that Indian tribes are the primary beneficiaries of their gaming operations and to protect such gaming as a means of generating tribal revenue, IGRA requires that tribes conduct background investigations on their gaming operations' primary management officials and key employees and submit those results to the Commission before issuing gaming licenses. 25 U.S.C. 2710(b)(2)(F)(ii)(III). The Act also requires tribes to notify the Commission after they have issued such gaming licenses to their primary management officials or key employees. 25 U.S.C. 2710(b)(2)(F)(ii)(I).

On January 25, 2013, the Commission published a final rule amending parts 556 and 558: to streamline the submission of documents to the Commission; to ensure that two notifications are submitted to the Commission in compliance with IGRA; and to clarify the rules regarding the issuance of temporary and permanent gaming licenses. 78 FR 5276, Jan. 25, 2013. The final rules published on

January 25, 2013 incorrectly referenced a specific section in one of its rules. This amendment is intended to correct the section reference in one of its rules.

**Regulatory Matters***Regulatory Flexibility Act*

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. Moreover, Indian Tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

*Small Business Regulatory Enforcement Fairness Act*

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of \$100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

*Unfunded Mandate Reform Act*

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

*Takings*

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

*Civil Justice Reform*

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

*National Environmental Policy Act*

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, et seq.

*Paperwork Reduction Act*

The information collection requirements contained in this rule

were previously approved by the Office of Management and Budget as required by the Paperwork Reduction Act, 44 U.S.C. 3501, et seq., and assigned OMB Control Number 3141-0003. The OMB control number expires on October 31, 2013.

**List of Subjects in 25 CFR Part 558**

Gaming, Indian lands.

**Text of the Rule**

For the reason discussed in the Preamble, the Commission amends its regulations at 25 CFR part 558 as follows:

**PART 558—GAMING LICENSES FOR KEY EMPLOYEES AND PRIMARY MANAGEMENT OFFICIALS**

■ 1. The authority citation for part 558 continues to read as follows:

**Authority:** 25 U.S.C. 2706, 2710, 2712.

**§ 558.2 [Amended]**

■ 2. Amend § 558.2 by revising the reference in paragraph (c) to “§ 558.3(a)” to read “paragraph (a) of this section.”

Dated: April 8, 2013.

**Tracie L. Stevens,**  
*Chairwoman.*

**Daniel J. Little,**  
*Associate Commissioner.*

[FR Doc. 2013-08538 Filed 4-11-13; 8:45 am]

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**DEPARTMENT OF DEFENSE****Office of the Secretary**

[DOD-2009-OS-0038; RIN 0790-AI54]

**32 CFR Part 182****Defense Support of Civilian Law Enforcement Agencies****AGENCY:** Department of Defense.**ACTION:** Final rule.

**SUMMARY:** This rule implements DoD regulations and legislation concerning restriction on direct participation by DoD personnel. It provides specific policy direction and assigns responsibilities with respect to DoD support provided to Federal, State, and local civilian law enforcement agencies, including responses to civil disturbances.

**DATES:** This rule is effective May 13, 2013.

**FOR FURTHER INFORMATION CONTACT:** Mr. Tom LaCrosse, 571-256-8353.

**SUPPLEMENTARY INFORMATION:**

## Executive Summary

### I. Purpose of the Regulatory Action

a. The purpose of this rule is to implement the statutory requirements for the Department of Defense support of civilian law enforcement agencies. This rule provides specific policy direction and assigns responsibilities to Department of Defense key individuals providing support to Federal, State, Tribal, and local law enforcement agencies, including response to civil disturbances within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any other political subdivision thereof.

b. The legal authority for this rule is 10 U.S.C. 375, "Restriction on participation by Military Personnel."

### II. Summary of the Major Provisions of the Rule

#### a. Support in Accordance With the Posse Comitatus Act

The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under title 18, U.S.C., or imprisoned not more than two years, or both. Section 182.6 (a) describes in detail the assistance that the Department of Defense may and may not provide civilian law enforcement agencies.

#### b. Support During Civil Disturbances

The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including the Department of Defense, for civil disturbances is important due to the potential severity of the consequences of such events for the Nation and the population. The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary

of Defense to provide for the restoration of law and order in a specific State or locality.

### III. Costs and Benefits

This rule does not have a significant effect on the economy. However, the Department of Defense may provide support to civilian law enforcement entities on either a reimbursable or non-reimbursable basis depending on the authority under which the support is provided. The benefit to the elements of the Department of Defense providing such support may include a benefit that is substantially equivalent to that derived from military operations or training. Additionally, the recipient civilian law enforcement agencies benefit from the Department of Defense's substantial capabilities when those capabilities are not needed for Department of Defense missions.

### Public Comments

On Tuesday, December 28, 2010, the Department of Defense published a proposed rule (75 FR 81547) requesting public comment. Two comments were received. Below are the comments and responses.

*Comment #1.* Comment on Proposed Rule: 32 CFR Part 182 DOD-2009-OS-0038. The definition given in § 182.3 of "civil disturbance" is overly broad and encompasses any number of situations that the Legislature and DOD entities might not have in mind at the time of drafting this rule. It is my recommendation that specific reference be made to DOD Directive 3025.12 within § 182.3 to allay any possible misreading of 32 CFR part 182. If Posse Comitatus is going to be suspended in times other than those specifically authorized by the Constitution, Congress must act to make the language clear and unambiguous. In addition, the definition of "Emergency Authority" in § 182.3 and DOD 3025.12 is unclear. In what sort of a civil emergency can prior Presidential authorization be "impossible" to obtain. These two definitions read together give an extraordinary degree of latitude to DOD entities within the borders of the United States. Finally, I question whether a rule is the appropriate venue for an expansion of this nature. Perhaps this is a task best left to congress for full public scrutiny and debate. Should this really be a task left to the DOD to make a rule essentially gutting 10 U.S.C.A. 331-4? Despite the fact that this rule has received certification by the Office of Information and Regulatory Affairs (OIRA), I seriously question whether there are not significant implications for its enactment under Executive Order

13132 (Federalism). If it is left to the DOD to determine when force is necessary, absent a Presidential order and absent the cooperation of local authorities, Posse Comitatus is for all intents and purposes at an end.

*DoD Response:* No action required. This instruction cancels DoD Directive 3025.12. "Civil disturbance" is an approved definition in the DoD Dictionary and makes no reference to the Posse Comitatus Act being "suspended." Also this rule does not make reference to the suspension of Posse Comitatus Act. It lists those actions that are permissible and restricted under the Act. The author also recommends that Congress, rather than DoD, make the language "clear and unambiguous."

*Comment #2.* The Posse Comitatus Act, 18 U.S.C. 1385, clearly applies to National Guard troops which have been federalized and are deployed under Title 10 authority within the United States. However, the courts have not definitively ruled on whether the Act applies to troops deployed under Title 32, and generally it is assumed that the act does not apply under those circumstances. If § 182.4(b) of this rule is meant to clearly state that the National Guard is, in fact, to act in compliance with the restrictions of the Posse Comitatus Act while in support of civilian law enforcement officials while deployed under Title 32 authority as well as Title 10, then this is a welcome clarification of DoD policy.

*DoD Response:* No action required. National Guard forces operating under Title 32 are under State control, and the Posse Comitatus Act would not apply. State law governs what actions State officials and State National Guard forces may take.

### Regulatory Procedures

*Executive Order 12866, "Regulatory Planning and Review," and Executive Order 13563, "Improving Regulation and Regulatory Review"*

It has been certified that 32 CFR part 182 does not:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in these Executive Orders.

*Sec. 202, Pub. L. 104-4, "Unfunded Mandates Reform Act"*

It has been certified that 32 CFR part 182 does not contain a Federal mandate that may result in the expenditure by State, local, and Tribal governments, in aggregate, or by the private sector, of \$100 million or more in any 1 year.

*Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

It has been certified that 32 CFR part 182 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule establishes procedures and assigns responsibilities within DoD for assisting civilian law enforcement agencies, therefore, it is not expected that small entities will be affected because there will be no economically significant regulatory requirements placed upon them.

*Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)*

It has been certified that 32 CFR part 182 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

*Executive Order 13132, "Federalism"*

It has been certified that 32 CFR part 182 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the national government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

**List of Subjects in 32 CFR Part 182**

Armed forces, Law enforcement.

Accordingly, 32 CFR part 182 is added to read as follows:

**PART 182—DEFENSE SUPPORT OF CIVILIAN LAW ENFORCEMENT AGENCIES**

- Sec.
- 182.1 Purpose.
  - 182.2 Applicability and scope.
  - 182.3 Definitions.
  - 182.4 Policy.
  - 182.5 Responsibilities.
  - 182.6 Procedures.

**Authority:** 10 U.S.C. 113, 331-334, 371-382, 2576, and 2667; 14 U.S.C. 141; 16 U.S.C. 23, 78, 593, and 1861; 18 U.S.C. 112, 351, 831, 1116, 1385, and 1751; 22 U.S.C. 408, 461-462; 25 U.S.C. 180; 31 U.S.C. 1535; 42 U.S.C. 97, 1989, and 5121-5207; 50 U.S.C. 1621-1622; and Public Law 94-524.

**§ 182.1 Purpose.**

This part:

(a) Establishes DoD policy, assigns responsibilities, and provides procedures for DoD support to Federal, State, Tribal, and local civilian law enforcement agencies, including responses to civil disturbances within the United States, including the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States or any other political subdivision thereof in accordance with 32 CFR part 185.

(b) Prescribes the regulations required by 10 U.S.C. 375.

**§ 182.2 Applicability and scope.**

This part:

(a) Applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

(b) Applies to the Office of the Inspector General of the Department of Defense (IG, DoD) only to the extent that this part does not conflict with any of the duties and responsibilities assigned to the IG, DoD pursuant to section 8(g) of Appendix, title 5, U.S.C. (also known as "The Inspector General Act of 1978, as amended").

(c) Governs all DoD Component planning for and participation in Defense support of civilian law enforcement activities, including domestic emergencies and civil disturbance operations (CDO) (formerly referred to as "military assistance for civil disturbances").

(d) Applies to National Guard (NG) personnel only in title 10, U.S.C., status only.

(e) Applies to civilian employees of the DoD Components and the activities of DoD contractors performed in support of the DoD Components.

(f) Does not apply to:

- (1) Counternarcotics activities.
- (2) Assistance to foreign law enforcement officials.
- (3) The Defense Intelligence and Counterintelligence Components, except

when providing assistance to civilian law enforcement activities in accordance with paragraph 2.6. of Executive Order 12333 and Procedure 12 of DoD 5240.1-R.<sup>1</sup>

(4) Requests for sensitive support, which are governed by DoD Directive S-5210.36.<sup>2</sup>

(5) NG personnel in State active duty or title 32, U.S.C., status.

(6) Maritime Homeland Security Operations, defined as time-critical requests by the United States Coast Guard for short duration (less than 48 hours) DoD support in countering an immediate maritime security threat, that are governed by the DoD-Department of Homeland Security Memorandum of Agreement for Department of Defense Support to the United States Coast Guard for Maritime Homeland Security.

(7) Aircraft piracy operations conducted pursuant to title 10, U.S.C.

**§ 182.3 Definitions.**

The following definitions apply to this part:

*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, U.S. possessions and territories, and political subdivisions thereof.

*Civil disturbance.* Group acts of violence and disorder prejudicial to public law and order.

*Civilian law enforcement official.* An officer or employee of a civilian Federal, State, local, and tribal law enforcement agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

*DoD personnel.* Federal military officers and enlisted personnel and civilian employees of the Department of Defense.

*Domestic emergencies.* Emergencies affecting the public welfare and occurring within the 50 states, District of Columbia, Commonwealth of Puerto Rico, U.S. possessions and territories, or any political subdivision thereof, as a result of enemy attack, insurrection, civil disturbance, earthquake, fire, flood, or other public disasters or equivalent emergencies that endanger life and property or disrupt the usual process of government. Domestic emergencies include civil defense emergencies, civil disturbances, major disasters, and natural disasters.

<sup>1</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf>.

<sup>2</sup> Authorized users may obtain a copy at [www.dtic.mil/whs/directives](http://www.dtic.mil/whs/directives). Others may send a written request by email to [USDI.Pubs@osd.mil](mailto:USDI.Pubs@osd.mil).

*Emergency authority.* A Federal military commander's authority, in extraordinary emergency circumstances where prior authorization by the President is impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or

(2) Duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions.

*Explosives or munitions emergency.* A situation involving the suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat to human health, including safety, or the environment, including property, as determined by an explosives or munitions emergency response specialist. Such situations may require immediate and expeditious action by an explosives or munitions emergency response specialist to control, mitigate, or eliminate the threat.

*Law enforcement agency.* Any of a number of agencies (outside the Department of Defense) chartered and empowered to enforce U.S. laws in the following jurisdictions: the United States, a State (or political subdivision) of the United States, a territory (or political subdivision) of the United States, a federally recognized Native American tribe or Alaskan Native Village, or within the borders of a host nation.

#### § 182.4 Policy.

It is DoD policy that:

(a) The Department of Defense shall be prepared to support civilian law enforcement agencies consistent with the needs of military preparedness of the United States, while recognizing and conforming to the legal limitations on direct DoD involvement in civilian law enforcement activities.

(b) Support of civilian law enforcement agencies by DoD personnel shall be provided in accordance with 18 U.S.C. 112, 351, 831, 1116, 1751, and 1385 (also known and hereinafter referred to as "The Posse Comitatus Act, as amended"); 10 U.S.C. chapter 18; 2

U.S.C. 1970 (for support to the U.S. Capitol Police); and other Federal laws, including those protecting the civil rights and civil liberties of individuals, as applicable.

(c) The restrictions in § 182.6(a)(1)(iii) shall apply to all actions of DoD personnel worldwide.

(d) Exceptions, based on compelling and extraordinary circumstances, may be granted to the restrictions in § 182.6(a)(1)(iii) for assistance to be provided outside the United States; only the Secretary of Defense or Deputy Secretary of Defense may grant such exceptions.

(e) Requests for law enforcement support shall be evaluated using the criteria in 32 CFR part 185.

#### § 182.5 Responsibilities.

(a) The Under Secretary of Defense for Policy (USD(P)) shall establish DoD policy governing defense support of civilian law enforcement agencies and facilitate the coordination of that policy with Federal departments and agencies; State, local, and tribal agencies; and the DoD Components, as appropriate.

(b) The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA)), under the authority, direction, and control of the USD(P) and in accordance with DoD Directive 5111.13,<sup>3</sup> "Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs (ASD(HD&ASA))," shall develop, coordinate, recommend, and supervise the implementation of policy for defense support of civilian law enforcement agencies and defense support of civil authorities (DSCA), including law enforcement support activities. In executing this responsibility for DoD law enforcement support activities, the ASD(HD&ASA) shall:

(1) Develop procedures and issue appropriate direction as necessary for defense support of civilian law enforcement agencies in coordination with the General Counsel of the Department of Defense, and in consultation with the Attorney General of the United States (Attorney General), as appropriate, and in accordance with responsibilities assigned in 32 CFR part 185 and DoD Directive 5111.13. This includes tasking the DoD Components to plan for and to commit DoD resources in response to requests from civil authorities for CDO (such a commitment of DoD resources for CDO must be authorized by the President of the

United States and directed by the Secretary of Defense).

(2) Serve as the principal point of contact between the Department of Defense and the Department of Justice for planning and executing CDO.

(3) Coordinate with civilian law enforcement agencies on policies to further DoD cooperation with civilian law enforcement agencies.

(4) Provide guidance for the use of Reserve Component personnel in support of civilian law enforcement agencies, in coordination with the Secretaries of the Military Departments and the Assistant Secretary of Defense for Reserve Affairs (ASD(RA)), and with the Chief, National Guard Bureau (NGB), as appropriate. This will include guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(5) Assist in the development of policy regulating plans, procedures, and requirements of the DoD Components with authority over defense resources that may be employed to provide law enforcement support.

(6) Inform the ASD(RA) of all requests for assistance by civilian law enforcement agencies that may be met using Reserve Component personnel and resources.

(i) Inform the Chief, NGB, of all requests for assistance by civilian law enforcement agencies that may be met using NG personnel.

(ii) Coordinate with the ASD(RA) and others as appropriate regarding duty status policies (e.g., performance of duty pursuant to 10 U.S.C. 331-334 and 371-382).

(7) Coordinate with the Chairman of the Joint Chiefs of Staff (CJCS) in advance of the commitment of any Federal military forces.

(8) Coordinate with the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense, when providing assistance to civilian law enforcement agencies to ensure an appropriate funding approach in accordance with § 182.6(g).

(9) In coordination with the Under Secretary of Defense for Intelligence (USD(I)), the CJCS, the Commanders of the Combatant Commands with DSCA responsibilities, and the Secretaries of the Military Departments, establish protocols and guidance for ensuring that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(10) Ensure, in coordination with the Assistant Secretary of Defense for

<sup>3</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/511113p.pdf>.

Special Operations and Low-Intensity Conflict (ASD(SO/LIC)), the proper use of electronic counter-measures (ECM) by or in support of DoD explosive ordnance disposal (EOD) personnel when supporting civil authorities is addressed in interagency agreements and contingency plans.

(c) The USD(I) shall:

(1) Establish DoD processes and procedures to provide support to civilian law enforcement officials with Defense Intelligence Component resources in accordance with appropriate statutory authorities and DoD and Intelligence Community policy.

(2) Facilitate consultation on DoD policy regarding intelligence support of law enforcement officials, with appropriate Federal departments and agencies; State, local, and tribal agencies; and the DoD Components.

(d) The IG, DoD, shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated pursuant to DoD Directive 5106.01,<sup>4</sup> "Inspector General of the Department of Defense (IG DoD)."

(e) The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) shall monitor and oversee the development of integrated training capabilities related to defense support to civilian law enforcement officials and the integration of these training capabilities into exercises and training to build, sustain, and assess readiness in accordance with DoD Directive 1322.18,<sup>5</sup> "Military Training."

(f) The ASD(RA), under the authority, direction, and control of the USD(P&R), shall assist the ASD(HD&ASA) in the development of guidance for use by approving authorities in evaluating the effect on military preparedness of requests for civilian law enforcement assistance that may involve use of the Reserve Components.

(g) The Heads of the DoD Components shall:

(1) Strictly comply with and disseminate throughout their Components the guidance issued by the ASD(HD&ASA) pursuant to paragraph (b) of this section.

(2) Identify appropriate resources for civilian law enforcement support that are consistent with law and DoD policy to carry out the intent of this part.

(3) Review training and operational programs to determine how and where

assistance can best be provided to civilian law enforcement officials, consistent with the responsibilities established in this section. This review should include recommendations regarding activities for which reimbursement could be waived in accordance with § 182.6(g)(2).

(4) Issue implementing guidance, in coordination with the ASD(HD&ASA), incorporating the procedures in this part, including:

(i) Procedures for prompt transfer of relevant information to law enforcement agencies.

(ii) Procedures for establishing local contact points in subordinate commands for purposes of coordination with Federal, State, tribal, and local civilian law enforcement officials.

(iii) Guidelines for evaluating requests for assistance in terms of effect on military readiness of the United States.

(5) Inform the CJCS of all requests requiring approval of the ASD(HD&ASA) or the Secretary of Defense, in accordance with this part.

(h) The Secretaries of the Military Departments, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Provide resources to the DoDComponents, consistent with DoD policies, goals, and objectives, to carry out the purpose of this part.

(2) Coordinate with the Commanders of the Combatant Commands with DSCA responsibilities to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(i) The CJCS, in addition to the responsibilities in paragraph (g) of this section, shall:

(1) Assist the ASD(HD&ASA) in developing recommendations for responding to requests for CDO and developing interagency policies on CDO.

(2) Develop processes to evaluate the effect of requests for civilian law enforcement assistance on military preparedness of the United States.

(3) Advise the Secretary of Defense, ASD(HD&ASA), or Heads of the DoDComponents, upon request, on the effect on military preparedness of the United States of any request for defense assistance with respect to CDO.

(j) The Commanders of the Combatant Commands with DSCA responsibilities, through the CJCS, shall, in addition to the responsibilities in paragraph (g) of this section:

(1) Provide support of civilian law enforcement authorities as directed by the Secretary of Defense.

(2) Implement the provisions of this part in appropriate training and exercises.

(3) When designated as a supported commander, coordinate with supporting DoDComponents all reimbursement for assistance provided under the provisions of this part.

(4) When designated as a supported commander, coordinate with the CJCS, the ASD(HD&ASA), and the ASD(SO/LIC) (for the employment of special operations forces) for all military preparations and operations, including the employment of Federal military forces as requested by the Attorney General and approved by the Secretary of Defense, as a result of any domestic emergency, including a terrorist incident, civil disturbance, or a natural disaster. Commanders shall observe all such law enforcement policies as the Attorney General may determine appropriate.

(5) For a terrorist incident having the potential for a request for military assistance by mutual agreement of DoD and the Federal Bureau of Investigation (FBI), designated Combatant Commanders may dispatch observers to the incident site to evaluate the situation. Any dispatch of DoD counterterrorism forces must be specifically authorized by the Secretary of Defense through the CJCS.

(6) Coordinate with the Secretaries of the Military Departments to ensure that the needs of civilian law enforcement officials for information are taken into account in the planning and execution of military training and operations.

(k) The Commanders of U.S. Northern Command (USNORTHCOM), U.S. Pacific Command (USPACOM), and U.S. Special Operations Command (USSOCOM), through the CJCS and in addition to the responsibilities in paragraphs (g) and (j) of this section, shall:

(1) Serve as the DoD planning agents for support of civilian law enforcement activities, including CDO, following the guidance of the ASD(HD&ASA) and in coordination with the CJCS.

(2) Lead planning activities for support of civilian law enforcement activities, including CDO, of the DoDComponents in accordance with § 182.6(b)(3). Serve as the DoD financial managers for their respective CDO operations in accordance with § 182.6(g)(2).

(l) The Chief, NGB, shall:

(1) Implement the procedures in this part.

(2) Assist the ASD(HD&ASA) in accordance with DoD Directive

<sup>4</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/510601p.pdf>.

<sup>5</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/132218p.pdf>.

5105.77,<sup>6</sup> “National Guard Bureau (NGB),” in developing policy guidance regarding the use of NG personnel for DoD support of civilian law enforcement agencies.

(3) Assist the ASD(HD&ASA) in the development of policy guidance for use by approving authorities in evaluating the effect on military preparedness if NG personnel are used to fulfill requests for civilian law enforcement assistance.

(4) Serve as an advisor to the Commanders of the Combatant Commands on NG matters pertaining to Combatant Command responsibilities under this part, and support planning and coordination for such activities as requested by the CJCS or the Commanders of other Combatant Commands.

(5) On all matters pertaining to the NG, serve as the channel of communications between: the Secretary of Defense, the CJCS, and the DoD Components (other than the Department of the Army and the Department of the Air Force); and the States. The Chief, NGB, shall keep the Secretaries of the Army and the Air Force informed of all communications unless otherwise directed by the Secretary of Defense.

(6) Coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

#### § 182.6 Procedures.

(a) *Participation of DoD Personnel in Civilian Law Enforcement Activities—(1) Guiding Statutory Requirements and Supporting Policies—(i) Statutory Restrictions.* (A) The primary restriction on DoD participation in civilian law enforcement activities is the Posse Comitatus Act. It provides that whoever willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute U.S. laws, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, shall be fined under title 18, U.S.C., or imprisoned not more than 2 years, or both.

(B) 10 U.S.C. 375 provides that the Secretary of Defense shall prescribe such regulations as may be necessary to ensure that any activity (including the provision of any equipment or facility or the assignment or detail of any personnel) under 10 U.S.C. chapter 18 does not include or permit direct participation by a member of the Army, Navy, Air Force, or Marine Corps in a search, seizure, arrest, or other similar

activity unless participation in such activity by such member is otherwise authorized by law.

(ii) *Permissible Direct Assistance.* Categories of active participation in direct law-enforcement-type activities (e.g., search, seizure, and arrest) that are not restricted by law or DoD policy are: (A) Actions taken for the primary purpose of furthering a DoD or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This does not include actions taken for the primary purpose of aiding civilian law enforcement officials or otherwise serving as a subterfuge to avoid the restrictions of the Posse Comitatus Act. Actions under this provision may include (depending on the nature of the DoD interest and the authority governing the specific action in question):

(1) Investigations and other actions related to enforcement of the Uniform Code of Military Justice (10 U.S.C. chapter 47).

(2) Investigations and other actions that are likely to result in administrative proceedings by the Department of Defense, regardless of whether there is a related civil or criminal proceeding. (See DoD Instruction 5525.07<sup>7</sup> and the Memorandum of Agreement Between the Attorney General and the Secretary of Defense with respect to matters in which the Department of Defense and the Department of Justice both have an interest.)

(3) Investigations and other actions related to a commander’s inherent authority to maintain law and order on a DoD installation or facility.

(4) Protection of classified defense information or equipment or controlled unclassified information (e.g., trade secrets and other proprietary information), the unauthorized disclosure of which is prohibited by law.

(5) Protection of DoD personnel, equipment, and official guests.

(6) Such other actions that are undertaken primarily for a military or foreign affairs purpose.

(B) Audits and investigations conducted by, under the direction of, or at the request of the IG, DoD, pursuant to the Inspector General Act of 1978, as amended.

(C) When permitted under emergency authority in accordance with 32 CFR part 185, Federal military commanders have the authority, in extraordinary emergency circumstances where prior authorization by the President is

impossible and duly constituted local authorities are unable to control the situation, to engage temporarily in activities that are necessary to quell large-scale, unexpected civil disturbances because:

(1) Such activities are necessary to prevent significant loss of life or wanton destruction of property and are necessary to restore governmental function and public order; or

(2) When duly constituted Federal, State, or local authorities are unable or decline to provide adequate protection for Federal property or Federal governmental functions. Federal action, including the use of Federal military forces, is authorized when necessary to protect Federal property or functions.

(D) DoD actions taken pursuant to 10 U.S.C. 331–334, relating to the use of Federal military forces in specified circumstances with respect to insurrection, domestic violence, or conspiracy that hinders the execution of State or Federal law.

(E) Actions taken under express statutory authority to assist officials in executing the laws, subject to applicable limitations. The laws that permit direct DoD participation in civilian law enforcement include:

(1) Protection of national parks and certain other Federal lands consistent with 16 U.S.C. 23, 78, and 593.

(2) Enforcement of the Fishery Conservation and Management Act of 1976, as amended, pursuant to 16 U.S.C. 1861(a).

(3) Assistance in the case of crimes against foreign officials, official guests of the United States, and other internationally protected persons pursuant to 18 U.S.C. 112 and 1116.

(4) Assistance in the case of crimes against Members of Congress, Members-of-Congress-elect, Justices of the Supreme Court and nominees, and certain senior Executive Branch officials and nominees in accordance with 18 U.S.C. 351.

(5) Assistance in the case of crimes involving nuclear materials in accordance with 18 U.S.C. 831.

(6) Protection of the President, Vice President, and other designated dignitaries in accordance with 18 U.S.C. 1751 and Public Law 94–524.

(7) Actions taken in support of the neutrality laws in accordance with 22 U.S.C. 408 and 461–462.

(8) Removal of persons unlawfully present on Indian lands in accordance with 25 U.S.C. 180.

(9) Execution of quarantine and certain health laws in accordance with 42 U.S.C. 97 and DoD Instruction

<sup>6</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/510577p.pdf>.

<sup>7</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/552507p.pdf>.

6200.03,<sup>8</sup> “Public Health Emergency Management Within the Department of Defense.”

(10) Removal of unlawful enclosures from public lands in accordance with 43 U.S.C. 1065.

(11) Protection of the rights of a discoverer of an island covered by 48 U.S.C. 1418.

(12) Support of territorial governors if a civil disorder occurs, in accordance with 48 U.S.C. 1422 and 1591.

(13) Actions in support of certain customs laws in accordance with 50 U.S.C. 220.

(F) Actions taken to provide search and rescue support domestically under the authorities provided in the National Search and Rescue Plan and DoD Instruction 3003.01.<sup>9</sup>

(iii) *Restrictions on Direct Assistance.* (A) Except as authorized in this part (e.g., in paragraphs (a) and (b) of this section), DoD personnel are prohibited from providing the following forms of direct civilian law enforcement assistance:

(1) Interdiction of a vehicle, vessel, aircraft, or other similar activity.

(2) A search or seizure.

(3) An arrest; apprehension; stop and frisk; engaging in interviews, interrogations, canvassing, or questioning of potential witnesses or suspects; or similar activity.

(4) Using force or physical violence, brandishing a weapon, discharging or using a weapon, or threatening to discharge or use a weapon except in self-defense, in defense of other DoD persons in the vicinity, or in defense of non-DoD persons, including civilian law enforcement personnel, in the vicinity when directly related to an assigned activity or mission.

(5) Evidence collection; security functions; crowd and traffic control; and operating, manning, or staffing checkpoints.

(6) Surveillance or pursuit of individuals, vehicles, items, transactions, or physical locations, or acting as undercover agents, informants, investigators, or interrogators.

(7) Forensic investigations or other testing of evidence obtained from a suspect for use in a civilian law enforcement investigation in the United States unless there is a DoD nexus (e.g., the victim is a member of the Military Services or the crime occurred on an installation under exclusive DoD jurisdiction) or the responsible civilian law enforcement official requesting such

testing declares in writing that the evidence to be examined was obtained by consent. Requests for exceptions to this restriction must be made through channels to the ASD(HD&ASA), who will evaluate, in coordination with the General Counsel of the Department of Defense, whether to seek Secretary of Defense authorization for an exception to policy.

(B) The use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel shall be in accordance with DoD Instruction 5525.13,<sup>10</sup> “Limitation of Authority to Deputize DoD Uniformed Law Enforcement Personnel by State and Local Governments.”

(C) Except as otherwise directed by the Secretary of Defense, the rules for the use of force and authority for the carrying of firearms by DoD personnel providing authorized support under this part shall be in accordance with DoD Directive 5210.56,<sup>11</sup> “Carrying of Firearms and the Use of Force by DoD Personnel Engaged in Security, Law and Order, or Counterintelligence Activities,” and any additional Secretary of Defense-approved rules for the use of force contained in CJCS Instruction 3121.01B, “Standing Rules of Engagement Standing Rules for the Use of Force for U.S. Forces.”

(D) Exceptions to these restrictions for assistance may be granted when the assistance is to be provided outside the United States. Only the Secretary of Defense or the Deputy Secretary of Defense may grant such exceptions, based on compelling and extraordinary circumstances.

(iv) *Use of DoD Personnel to Operate or Maintain Equipment.* The use of DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment shall be limited to situations when the use of non-DoD personnel for operation or maintenance of such equipment would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States. In general, the head of the civilian law enforcement agency may request a DoD Component to provide personnel to operate or maintain, or to assist in operating or maintaining, equipment for the civilian agency. This assistance shall be subject to this guidance:

(A) Such assistance may not involve DoD personnel directly participating in a law enforcement operation (as

described in paragraph (a)(1)(iii) of this section).

(B) The performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians.

(C) The use of DoD aircraft to provide transportation for civilian law enforcement agencies may be provided only in accordance with DoD 4515.13–R.<sup>12</sup>

(D) A request for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment must be made pursuant to 10 U.S.C. 374 or other applicable law that permits DoD personnel to provide such assistance to civilian law enforcement officials. A request that is made pursuant to 10 U.S.C. 374 must be made by the head of a civilian agency empowered to enforce any of these laws:

(1) 21 U.S.C. 801–904 and 951–971.

(2) 8 U.S.C. 1324–1328.

(3) A law relating to the arrival or departure of merchandise, as defined in 19 U.S.C. 1401, into or out of the customs territory of the United States, as defined in 19 U.S.C. 1401, or any other territory or possession of the United States.

(4) 46 U.S.C. chapter 705.

(5) Any law, foreign or domestic, prohibiting terrorist activities.

(E) In addition to the assistance authorized under paragraph (a)(1)(ii)(A) of this section:

(1) DoD personnel may be made available to a Federal law enforcement agency to operate or assist in operating equipment, to the extent the equipment is used in a supporting role, with respect to:

(i) A criminal violation of the laws specified in paragraph (a)(1)(iv)(D) of this section.

(ii) Assistance that the Federal law enforcement agency is authorized to furnish to a State, local, or foreign government that is involved in the enforcement of laws similar to those in paragraph (a)(1)(iv)(D) of this section.

(iii) A foreign or domestic counterterrorism operation, including support of FBI Joint Terrorism Task Forces.

(iv) Transportation of a suspected terrorist from a foreign country to the United States to stand trial.

(2) DoD personnel made available to a civilian law enforcement agency pursuant to 10 U.S.C. 374 may operate equipment for:

(i) Detection, monitoring, and communication of the movement of air and sea traffic.

<sup>8</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/620003p.pdf>.

<sup>9</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/300301p.pdf>.

<sup>10</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/552513p.pdf>.

<sup>11</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/521056p.pdf>.

<sup>12</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf>.



(ii) Detection, monitoring, and communication of the movement of surface traffic outside of the geographic boundary of the United States and, if the initial detection occurred outside of the boundary, within the United States, not to exceed 25 miles of the boundary.

(iii) Aerial reconnaissance (does not include satellite reconnaissance).

(iv) Interception of vessels or aircraft detected outside the land area of the United States for the purposes of communicating with such vessels and aircraft to direct such vessels and aircraft to go to a location designated by appropriate civilian officials.

(v) Operation of equipment to facilitate communications in connection with the law enforcement programs specified in paragraph (a)(1)(iv)(D) of this section.

(vi) The following activities that are subject to joint approval by the Secretary of Defense and the Attorney General (and the Secretary of State in the case of a law enforcement operation outside of the land area of the United States): the transportation of civilian law enforcement personnel along with any other civilian or military personnel who are supporting, or conducting, a joint operation with civilian law enforcement personnel; the operation of a base of operations for civilian law enforcement and supporting personnel; and the transportation of suspected terrorists from foreign countries to the United States for trial (so long as the requesting Federal law enforcement agency provides all security for such transportation and maintains custody over the suspect through the duration of the transportation).

(vii) The detection, monitoring, and tracking of the movement of weapons of mass destruction under the circumstances described above when outside the United States.

(F) DoD personnel made available to operate equipment for the purposes in paragraphs (a)(1)(iv)(E)(2)(i) and (a)(1)(iv)(E)(2)(iv) of this section may continue to operate such equipment in cases involving the pursuit of vessels or aircraft into the land area of the United States where the detection began outside such land area.

(G) With the approval of the Secretary of Defense, DoD personnel may be made available to any Federal, State, or local civilian law enforcement agency to operate equipment for purposes other than described in paragraph (a)(2) of this section, only to the extent that such support does not involve direct assistance by such personnel in a civilian law enforcement operation unless such direct participation is

otherwise authorized by law and is authorized by the Secretary of Defense.

(H) Nothing in this part restricts the authority of Federal military commanders to take emergency action to prevent loss of life or wanton destruction of property as provided in paragraph (a)(1)(ii)(C) of this section.

(I) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph (a)(1)(ii)(E) of this section, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by policy or the DoD Components concerned.

(v) *Expert Advice.* DoD Components may provide, subject to paragraph (a)(5) of this section, expert advice to Federal, State, or local law enforcement officials in accordance with 10 U.S.C. 373. This does not permit direct assistance by DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(vi) *Training.* (A) The DoD Components may provide, subject to paragraph (a)(5) of this section, training to Federal, State, and local civilian law enforcement officials. This does not permit large-scale or elaborate DoD training, and does not permit regular or direct involvement of DoD personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this section.

(B) Training of Federal, State, and local civilian law enforcement officials shall be provided according to this guidance:

(1) Assistance shall be limited to situations when the use of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise military preparedness of the United States.

(2) Assistance may not involve DoD personnel participating in a law enforcement operation, except as otherwise authorized by law.

(3) Assistance of DoD personnel shall be provided at a location where there is not a reasonable likelihood of a confrontation between law enforcement personnel and civilians, except as otherwise authorized by this part.

(C) This paragraph does not apply to advanced military training, which is addressed in Deputy Secretary of Defense Memorandum, "DoD Training Support to U.S. Civilian Law Enforcement Agencies," June 29, 1996,<sup>13</sup> and Deputy Secretary of Defense

Memorandum, "Request for Exception to Policy," November 12, 1996.<sup>14</sup> Additional exceptions to the policy in Deputy Secretary of Defense Memorandum, "DoD Training Support to U.S. Civilian Law Enforcement Agencies," may be requested on a case-by-case basis. Requests for such exceptions shall be forwarded through the ASD(HD&ASA). Advanced military training:

(1) Includes advanced marksmanship training, including sniper training, military operations in urban terrain (MOU), advanced MOU, close quarters battle/close quarters combat, and similar training.

(2) Does not include basic military skills such as basic marksmanship, patrolling, mission planning, medical, and survival.

(vii) *Other Permissible Assistance.* These forms of indirect assistance are not prohibited by law or DoD policy:

(A) Transfer to Federal, State, or local law enforcement officials of information acquired in the normal course of DoD operations that may be relevant to a violation of any Federal or State laws.

(B) Information obtained through procedures, means, or devices authorized by Federal law exclusively for use in gathering, obtaining, or acquiring national intelligence or military intelligence may be transferred unless specifically prohibited by law. Information shall not be transferred if it meets any of the following criteria:

(1) The acquisition of that information violates applicable law protecting the privacy or constitutional rights of any person, including rights protected by 5 U.S.C. 552a (also known as "The Privacy Act of 1974, as amended").

(2) It would have been illegal for those civilian law enforcement officials to have obtained the information or employ the procedures, means, or devices used by the DoD Component to obtain the information.

(C) Such other actions, approved in accordance with procedures established by the DoD Components concerned, that do not subject civilians to the use of DoD power that is regulatory, prescriptive, proscriptive, or compulsory.

(2) *Exceptions Based on Status.* The restrictions in paragraph (a) of this section do not apply to:

(i) A member of a Reserve Component when not on active duty, active duty for training, or inactive duty for training.

(ii) A member of the NG when not in Federal service.

(iii) A civilian employee. If the civilian employee is under the direct

<sup>13</sup> Available from OASD(HD&ASA)/Room 3D247, 2600 Defense Pentagon, Washington, DC 20301.

<sup>14</sup> Available from OASD(HD&ASA)/Room 3D247, 2600 Defense Pentagon, Washington, DC 20301.



control of a military officer, assistance will not be provided unless it is permitted by paragraph (a)(3) of this section.

(iv) A member of a Military Service when off duty and in a private capacity. A Service member is acting in a private capacity when he or she responds on his or her own volition to assist law enforcement officials instead of acting under the direction or control of DoD authorities.

(v) A member of the Civil Air Patrol, except when performing missions pursuant to 10 U.S.C. 9442(b).

(3) *Exceptions Based on Military Service.* By policy, Posse Comitatus Act restrictions (as well as other restrictions in this part) are applicable to the Department of the Navy (including the Marine Corps) with such exceptions as the Secretary of Defense may authorize in advance on a case-by-case basis.

(i) Such exceptions shall include requests from the Attorney General for assistance pursuant to 21 U.S.C. 873(b).

(ii) Requests for approval of other exceptions should be made by a senior official of the civilian law enforcement agency concerned, who verifies that:

(A) The size or scope of the suspected criminal activity poses a serious threat to the interests of the United States and enforcement of a law within the jurisdiction of the civilian agency would be seriously impaired if the assistance were not provided because civilian assets are not available to perform the mission; or

(B) Civilian law enforcement assets are not available to perform the mission, and temporary assistance is required on an emergency basis to prevent loss of life or wanton destruction of property.

(4) *Military Readiness.* Assistance may not be provided if such assistance could adversely affect military preparedness. Implementing documents issued by the Heads of the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

(5) *Approval Authority.* Requests by civilian law enforcement officials for use of DoD personnel to provide assistance to civilian law enforcement agencies shall be forwarded to the appropriate approval authority.

(i) The Secretary of Defense is the approval authority for requests for direct assistance in support of civilian law enforcement agencies, including those responding with assets with the potential for lethality, except for the use of emergency authority as provided in paragraph (a)(1)(ii)(C) of this section and

in 32 CFR part 185, and except as otherwise provided below.

(ii) Requests that involve the Defense Intelligence and Counterintelligence entities are subject to approval by the Secretary of Defense and the guidance in DoD Directive 5240.01<sup>15</sup> and DoD 5240.1-R.

(iii) The Secretaries of the Military Departments and the Directors of the Defense Agencies may, in coordination with the ASD(HD&ASA), approve the use of DoD personnel:

(A) To provide training or expert advice in accordance with paragraphs (a)(1)(v) and (a)(1)(vi) of this section.

(B) For equipment maintenance in accordance with paragraph (a)(1)(iv) of this section.

(C) To monitor and communicate the movement of air and sea traffic in accordance with paragraphs (a)(1)(iv)(E)(2)(i) and (a)(1)(iv)(E)(2)(iv) of this section.

(iv) All other requests, including those in which subordinate authorities recommend disapproval, shall be submitted promptly to the ASD(HD&ASA) for consideration by the Secretary of Defense, as appropriate.

(v) The views of the CJCS of shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(HD&ASA), that otherwise involve personnel assigned to a unified or specified command, or that may affect military preparedness.

(vi) All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of Reserve Component personnel or equipment shall be coordinated with the ASD(RA). All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of NG personnel also shall be coordinated with the Chief, NGB. All requests that are to be considered by the Secretary of Defense or the ASD(HD&ASA) that may involve the use of NG equipment also shall be coordinated with the Secretary of the Military Department concerned and the Chief, NGB.

(b) *DoD Support of CDO.* (1) *Guiding Statutory Requirements and Supporting Policies.* (i) The President is authorized by the Constitution and laws of the United States to employ the Armed Forces of the United States to suppress insurrections, rebellions, and domestic violence under various conditions and circumstances. Planning and preparedness by the Federal Government, including DoD, for civil

disturbances is important due to the potential severity of the consequences of such events for the Nation and the population.

(ii) The primary responsibility for protecting life and property and maintaining law and order in the civilian community is vested in State and local governments. Supplementary responsibility is vested by statute in specific agencies of the Federal Government other than DoD. The President has additional powers and responsibilities under the Constitution of the United States to ensure that law and order are maintained.

(iii) Any employment of Federal military forces in support of law enforcement operations shall maintain the primacy of civilian authority, and, unless otherwise directed by the President, responsibility for the management of the Federal response to civil disturbances rests with the Attorney General. The Attorney General is responsible for receiving State requests for Federal military assistance, coordinating such requests with the Secretary of Defense and other appropriate Federal officials, and presenting such requests to the President who will determine what Federal action will be taken.

(iv) The employment of Federal military forces to control civil disturbances shall only occur in a specified civil jurisdiction under specific circumstances as authorized by the President, normally through issuance of an Executive order or other Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality in accordance with 10 U.S.C. 331-334.

(v) Planning by the DoD Components for CDO shall be compatible with contingency plans for national security emergencies, and with planning for DSCA pursuant to 32 CFR part 185. For example:

(A) Guidelines concerning the use of deputized State or local law enforcement powers by DoD uniformed law enforcement personnel are outlined in DoD Instruction 5525.13.

(B) Guidelines concerning the use of deadly force and/or the carrying of firearms by DoD personnel while engaged in duties related to security or law and order, criminal investigations, or counterintelligence investigations; protecting personnel; protecting vital Government assets; or guarding Government installations and sites, property, and persons (including prisoners) are outlined in DoD Directive 5210.56 and any additional Secretary of Defense-approved rules for the use of

<sup>15</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001.pdf>.

force contained in CJCS Instruction 3121.01B, "Standing Rules of Engagement/Standing Rules for the Use of Force for U.S. Forces," June 13, 2005.

(2) *DoD Requirements.* (i) Federal military forces shall not be used for CDO unless specifically authorized by the President, except under emergency authority as provided in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section.

(ii) Federal military forces shall be made available for CDO as directed by the President. The Secretary of Defense or other authorized DoD official may, where authorized and consistent with the direction of the President, establish the source and composition of those forces to achieve appropriate balance with other national security or DoD priorities.

(iii) Federal military forces employed in CDO shall remain under Secretary of Defense command and control at all times.

(iv) The pre-positioning of Federal military forces for CDO shall not exceed a battalion-sized unit in a single location unless a larger force is authorized by the President.

(v) DoD Components shall not take charge of any function of civil government unless absolutely necessary under conditions of extreme emergency (e.g., when using emergency authority as described in 32 CFR part 185 and paragraph (a)(1)(ii)(C) of this section). Any commander who is directed, or undertakes, to control such functions shall strictly limit DoD actions to emergency needs and shall facilitate the reestablishment of civil responsibility at the earliest time possible.

(3) *CDO Planning.* (i) To ensure essential control and sound management of all Federal military forces employed in CDO, centralized direction from the Secretary of Defense, through the ASD(HD&ASA), shall guide planning by the DoD Components, whether alone or with civil authorities. Execution of CDO missions shall be decentralized through the Commanders of USNORTHCOM, USPACOM, or USSOCOM, or through joint task force commanders, and only when specifically directed by the Secretary of Defense or as described in paragraph (a)(1)(ii)(C) of this section.

(ii) The Commanders of USNORTHCOM, USPACOM, and USSOCOM, as the DoD planning agents for CDO in accordance with § 182.5(k) of this part, shall lead the CDO planning activities of the DoD Components in these areas:

(A) USNORTHCOM. The 48 contiguous States, Alaska, the District of

Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

(B) USPACOM. Hawaii and the U.S. possessions and territories in the Pacific area.

(C) USSOCOM. CDO activities involving special operations forces.

(iii) CDO plans and readiness measures shall foster efficient employment of Federal equipment controlled by NG forces, whether employed under State or Federal authority, as well as other resources of the DoD Components.

(4) *Role of the National Guard.* (i) NG forces in a State active duty status have primary responsibility to support State and local Government agencies for disaster responses and in domestic emergencies, including in response to civil disturbances; such activities would be directed by, and under the command and control of, the Governor, in accordance with State or territorial law and in accordance with Federal law.

(ii) NG forces may be ordered or called into Federal service to ensure unified command and control of all Federal military forces for CDO when the President determines that action to be necessary in extreme circumstances.

(iii) Federal military forces shall conduct CDO in support of the Attorney General or designee (unless otherwise directed by the President) to assist State law enforcement authorities. Federal military forces will always remain under the command and control of the President and Secretary of Defense. Federal military forces also could conduct CDO in concert with State NG forces under the command of a dual-status commander, if determined to be appropriate by the Secretary of Defense and the Governor(s) concerned, or in close coordination with State NG forces using direct liaison.

(iv) Chief, NGB, will coordinate the sharing of State contingency plans for the use of non-federalized NG forces in CDO roles between the responsible State Adjutants General and the responsible Combatant Commander.

(5) *Cooperation with Civil Authorities.* (i) The Attorney General shall receive and coordinate preliminary requests for CDO from civil authorities pursuant to 10 U.S.C. 331–334.

(A) Formal requests for CDO shall be addressed to the President.

(B) The Attorney General may assign a component law enforcement agency of the Department of Justice, such as the FBI or Bureau of Alcohol, Tobacco, Firearms, and Explosives, to lead the operational response to a civil disturbance incident.

(C) The President may provide, through the Attorney General or other

Federal official, a personal representative to communicate the President's policy guidance to the military commander conducting CDO. That representative may augment, but shall not replace, the military chain of command. In addition, an individual may be designated by the Attorney General as the Senior Civilian Representative of the Attorney General.

(ii) The ASD(HD&ASA) shall represent DoD in coordinating CDO planning and execution with the Department of Justice, and other Federal and State law enforcement agencies, as appropriate.

(6) *Approval Authority.* (i) The President is the approval authority for requests for assistance for CDO, except for emergency authority as provided in paragraph (a)(1)(ii)(C) of this section and in 32 CFR part 185.

(ii) If the President directs the use of Federal military forces for CDO, the ASD(HD&ASA) and the CJCS shall provide advice to the Secretary of Defense regarding the employment of DoD personnel and resources to implement the direction of the President. Secretary of Defense approval of such employment shall be communicated to the Combatant Commanders through the CJCS.

(iii) The ASD(HD&ASA) shall provide any request, contingency plan, directive, or order affecting the employment of special operations forces to the ASD(SO/LIC), who supervises the activities of those forces on behalf of the Secretary of Defense in accordance with DoD Directive 5111.10,<sup>16</sup> "Assistant Secretary of Defense for Special Operations and Low-Intensity Conflict (ASD(SO/LIC))."

(iv) Additionally, the ASD(HD&ASA), in coordination with the ASD(SO/LIC) for the employment of special operations forces, shall provide overall policy oversight of the employment of DoD personnel and resources for CDO responding to terrorist incidents and other similar events in coordination with the CJCS.

(c) *Domestic EOD Support of Civilian Law Enforcement Agencies.*

(1) *Guiding Statutory Requirements and Supporting Policies.* DoD EOD personnel may provide immediate response for EOD support in support of civil authorities, when requested, in accordance with 32 CFR part 185 and may provide for disposition of military munitions in accordance with 40 CFR parts 260–270.

(2) *DoD Requirements.* (i) DoD personnel will not participate in search

<sup>16</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/511110p.pdf>.

or seizure of ordnance as part of a civilian law enforcement investigation. DoD personnel may, as described in paragraph (c) of this section, render safe military munitions and take possession of military munitions for appropriate disposition at the request of civilian law enforcement officials when such military munitions have already been discovered and seized by civilian law enforcement personnel.

(ii) DoD officials, including local military commanders, may provide EOD and explosive detection dog support to local civil authorities to save lives, prevent human suffering, and mitigate great property damage under imminently serious conditions in accordance with 32 CFR part 185. Guidance for planning and execution requirements for Combatant Commanders and the Military Departments in responding to DoD military munitions is found in DoD Manual 6055.09, Volume 7,<sup>17</sup> "DoD Ammunition And Explosives Safety Standards: Munitions, and Material Potentially Presenting an Explosive Hazard."

(iii) Such an immediate response may include actions to provide advice and assistance to civil authorities, when requested, in the mitigation, rendering safe, and disposition of suspected or detected presence of unexploded ordnance (UXO), damaged or deteriorated explosives or munitions, an improvised explosive device (IED), other potentially explosive material or device, or other potentially harmful military chemical munitions or device, that creates an actual or potential imminent threat.

(iv) Military munitions, discarded military munitions, and UXO in an unauthorized location under the jurisdiction of public officials potentially present an imminent and substantial danger to public safety and health and to the environment, and may require an immediate EOD response.

(A) These conditions include:

(1) Items that were illegally removed from military installations.

(2) Military munitions that land off range.

(3) Munitions located on property formerly leased or owned by DoD (including manufacturing areas, pads, pits, basins, ponds, streams, burial sites, and other locations incident to such operations).

(4) Transportation accidents involving military munitions.

(5) Unauthorized public possession of military munitions.

(B) Military munitions found in the conditions in paragraph (c)(2)(iv) of this section should be considered extremely hazardous and should not be disturbed or moved until technically qualified EOD personnel assess and determine the hazard.

(C) DoD officials, including local military commanders:

(1) Will provide EOD support for military munitions, discarded military munitions, and UXO that have (or appear to have) DoD origins.

(2) May, in accordance with 32 CFR part 185, provide EOD support for military munitions or foreign ordnance that do not appear to have DoD origins found in the United States under the conditions in paragraph (c)(2)(iv) of this section.

(v) Rendering safe and disposing of improvised devices, non-military commercial explosives, or similar dangerous articles reported or discovered outside of DoD installations are primarily the responsibility of civil authorities. However, due to the potential lethality and danger to public safety, DoD EOD personnel may provide assistance upon request in accordance with 32 CFR part 185.

(vi) When responding to requests for assistance from civil authorities under immediate response authority pursuant to 32 CFR part 185, the closest capable EOD unit regardless of Military Service will provide support.

(vii) Requests for non-immediate DoD EOD support are subject to approval by the Secretary of Defense. Examples of non-immediate DoD EOD support include, but are not limited to, post-blast analysis, use of DoD material and equipment, and support of pre-planned events. Exceptions include those activities in support of the U.S. Secret Service that, in accordance with DoD Directive 3025.13,<sup>18</sup> "Employment of DoD Capabilities in Support of the U.S. Secret Service (USSS), Department of Homeland Security (DHS)," do not require Secretary of Defense approval and those activities undertaken in response to requests for technical assistance or assessment of military munitions that are performed solely for safety purposes.

(viii) DoD EOD forces providing support under immediate response authority under 32 CFR part 185 will also comply with 40 CFR parts 260–270, "Hazardous Waste Management System: General," and other applicable local, State, and Federal laws and regulations,

including environmental laws and regulations.

(ix) The National Joint Operations and Intelligence Center (NJOIC) and the FBI's Strategic Information Operations Center shall be advised immediately of the recovery and disposition of military munitions, as well as responses to non-military munitions and explosives. DoD Components also shall ensure that reports are submitted within 72 hours, in accordance with 18 U.S.C. 846 and DoD Manual 5100.76,<sup>19</sup> "Physical Security of Sensitive Conventional Arms, Ammunitions, and Explosives (AA&E)," to: Bureau of Alcohol, Tobacco, Firearms, and Explosives, U.S. Bomb Data Center, 99 New York Ave. NE., 8S 295, Washington, DC 20226.

(3) *Planning and Execution.* (i) Combatant Commanders will:

(A) Maintain situational awareness of all EOD elements in support of civil authorities, consolidate Service EOD incident reports, and provide to the ASD(HD&ASA) and the ASD(SO/LIC) a monthly consolidated report highlighting:

(1) DoD EOD support of civil authorities, resources, and work-hours expended.

(2) Final determination of the item, as well as the agency supported.

(3) Final disposition of the hazard, as well as a cost estimate of the support provided.

(4) A status of reimbursement by the supported entity. Reimbursement will not be sought for EOD response to military munitions that have (or appear to have) DoD origins.

(B) Coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

(ii) In situations where DoD EOD personnel are asked to provide support to DOJ/FBI in conducting electronic countermeasures (ECM), such personnel may only employ ECM in the United States if approved by the Secretary of Defense and in accordance with the DOJ program for applying ECM in the United States in response to threats of radio-controlled improvised explosive devices (DOJ Federal ECM Program) approved by the National Telecommunications and Information Administration (NTIA) (see Section 7.25 of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management). NTIA has approved the use of DoD military ECM assets in support of the DOJ Federal ECM Program, however, only those DoD military ECM assets/systems

<sup>17</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/605509m/605509-M-V7.pdf>.

<sup>18</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/302513p.pdf>.

<sup>19</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/510076m.pdf>.

that have been approved by NTIA for employment in the United States under the DOJ Federal ECM Program may be used by DoD EOD personnel in providing the requested support to DOJ/FBI.

(A) DoD officials may provide ECM equipment, and expert advice regarding the FBI's use of the equipment, in accordance with paragraph (c)(2) of this section when the FBI has approved use of ECM and when there is insufficient time to obtain Secretary of Defense approval.

(B) All use of ECM equipment or devices while conducting EOD operations supporting civil authorities will be coordinated with and follow procedures established by the FBI's Strategic Information Operations Center and reported to the NJOIC.

(iii) In consideration of the Military Departments' and the Combatant Commanders' planning requirements and in consultation with appropriate local civilian agencies, installation commanders will identify off-installation critical infrastructure and key resources, such as nuclear power stations, power plants, communications hubs, and water treatment plants. Combatant Commanders and other responsible DoD officials will assist in developing priorities for EOD support of civil authorities. Installations without resident EOD forces will develop plans to seek support from the nearest DoD EOD organization.

(iv) Combatant Commanders, as appropriate, will maintain situational awareness of all EOD elements in support of civil authorities, coordinate and de-conflict Military Services' EOD domestic areas of response, and develop consolidated reporting procedures to permit accurate and timely collection of data from the supporting Services.

(v) Service EOD reports shall be used to indicate that DoD is reclaiming accountability of DoD military munitions that were found outside the custody of DoD. The Military Departments will forward reports of reclaimed military munitions to installations for ammunitions logistics management and submission to the DoD Explosives Safety Board in accordance with DoD Manual 6055.09, Volume 7, DoD Manual 5100.76, and DoD Instruction 5160.68,<sup>20</sup> "Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA, the Military Services, and the United States Special Operations Command (USSOCOM)."

(vi) Reimbursement is not required for EOD support involving military munitions, discarded military munitions, and UXO that have DoD origins or appear to have DoD origins. Combatant Commanders will coordinate with the DoD Explosives Safety Board and the Executive Manager for EOD Training and Technology to ensure information sharing.

(vii) In accordance with DoD Instruction 6055.17,<sup>21</sup> "DoD Installation Emergency Management (IEM) Program," and applicable Military Department issuances, commanders of EOD organizations will:

(A) Coordinate with installation emergency managers to:

(1) Establish local processes and procedures to respond to and report military and non-military munitions support requests from civil law enforcement agencies.

(2) Determine priorities of EOD support for protecting critical infrastructure and key resources when requested.

(B) Participate in installation emergency response exercises.

(C) Determine training requirements for conducting DSCA response missions.

(4) *Cooperation with Civil Authorities.*

(i) DoD EOD forces will maintain relationships with local, State, tribal, and other Federal bomb disposal and other law enforcement agency assets near their geographical locations. Such relationships may include conferences and training exercises to increase the interoperability and integration with local bomb squad agencies, to improve the response capabilities to civil authorities when requested, and to enhance the consolidated response capabilities.

(ii) DoD EOD personnel may conduct UXO and explosive ordnance awareness and education programs that inform and promote public safety of the hazards associated with military munitions and explosive items.

(d) *Domestic terrorist incident support.* (1) *DoD guidance.* Only the Secretary of Defense may authorize the use of DoD personnel in support of civilian law enforcement officials during a domestic terrorism incident, except as described in paragraph (d)(1)(ii) of this section. The Commanders of USNORTHCOM, USPACOM, and USSOCOM, in coordination with the CJCS, ASD(HD&ASA), and ASD(SO/LIC), have primary responsibility for all military preparations and—when authorized by

the Secretary of Defense—operations, including the employment of armed Federal military forces at the scene of any domestic terrorist incident.

(i) In discharging those functions, the Commanders of USNORTHCOM, USPACOM, and USSOCOM shall operate in a manner consistent with law enforcement policies established by the Attorney General.

(ii) When a terrorist incident develops that has a potential for military involvement, the Commanders of USNORTHCOM, USPACOM, and USSOCOM may dispatch military observers to the incident site, with the concurrence of the senior FBI official at the site, to appraise the situation before any decision is made by the Secretary of Defense to commit Federal military forces. Any dispatch of U.S. counterterrorism forces as observers must be specifically authorized by the Secretary of Defense through the CJCS.

(2) *Requirement for vocal orders to be published.* When the Secretary of Defense authorizes U.S. counterterrorism forces to assist with the resolution of a domestic terrorist incident, the CJCS shall issue the appropriate order on behalf of the Secretary of Defense. That order shall designate the command relationships for the deploying forces.

(e) *Use of information collected during DoD operations.*

(1) *Acquisition and dissemination.* DoD Components are encouraged to provide to Federal, State, or local civilian law enforcement officials any information collected during the normal course of military operations that may be relevant to a violation of State or Federal law within the jurisdiction of such officials, except as described in paragraph (a)(6)(vii)(B) of this section. The DoD Components shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

(i) The assistance provided shall be in accordance with DoD 5400.11–R,<sup>22</sup> "Department of Defense Privacy Program," and with 10 U.S.C. 371 and other applicable laws.

(ii) The acquisition and dissemination of information under paragraph (e) of this section shall be in accordance with DoD Directive 5200.27,<sup>23</sup> "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," DoD Directive

<sup>20</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/516068p.pdf>.

<sup>21</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/605517p.pdf>.

<sup>22</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/540011r.pdf>.

<sup>23</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/520027p.pdf>.

5240.01,<sup>24</sup> “DoD Intelligence Activities,” and, for DoD intelligence components, DoD 5240.1–R,<sup>25</sup> “Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons.”

(iii) The DoD Components shall establish procedures for “routine use” disclosures of such information in accordance with DoD Instruction 5160.68,<sup>26</sup> “Single Manager for Conventional Ammunition (SMCA): Responsibilities of the SMCA, the Military Services, and the United States Special Operations Command (USSOCOM),” and DoD Directive 5400.11,<sup>27</sup> “DoD Privacy Program.”

(iv) Under guidance established by the DoD Components concerned, the planning and execution of compatible DoD training and operations shall, to the maximum extent practicable, take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training or operations performed by Federal military forces consistent with 10 U.S.C. 371.

(v) The needs of civilian law enforcement officials shall, to the maximum extent practicable, be considered when scheduling routine training missions, consistent with 10 U.S.C. 371. This does not permit the planning or creation of missions or training for the primary purpose of aiding civilian law enforcement officials, and it does not permit conducting training or missions for the purpose of routinely collecting information about U.S. citizens.

(vi) Civilian law enforcement agents may accompany routinely scheduled training flights as observers for the purpose of collecting law enforcement information. This provision does not authorize the use of DoD aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials. Such assistance may be provided only in accordance with DoD 4515.13–R,<sup>28</sup> “Air Transportation Eligibility.”

(vii) Intelligence information held by the DoD Components and relevant to drug interdiction or other civilian law enforcement matters shall be provided promptly to appropriate civilian law

enforcement officials, unless sharing that information is determined by the head of that DoD Component to be inconsistent with national security. Under procedures established by the DoD Components concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under provisions of DoD 5240.1–R shall also be provided to law enforcement officials at the El Paso Intelligence Center.

(viii) Nothing in this section modifies DoD procedures for dissemination of information for foreign intelligence or counterintelligence purposes.

(ix) The DoD Components are encouraged to participate in the Department of Justice law enforcement coordinating committees situated in each Federal judicial district.

(x) The assistance provided under paragraph (e) of this section may not include or permit direct participation by DoD personnel in the interdiction of a vessel, aircraft, or land vehicle, or in a search, seizure, arrest, or other similar activity, unless the member’s participation in such activity is otherwise authorized by law in accordance with paragraph (a)(1)(ii) of this section.

(2) *Military readiness.* Information shall not be provided under paragraph (e) of this section if it could adversely affect military preparedness of the United States.

(f) *Use of DoD equipment and facilities.*

(1) *Equipment and facilities.* The DoD Components may make equipment, base facilities, or research facilities available to Federal, State, or local civilian law enforcement officials for law enforcement purposes in accordance with the guidance in paragraph (f) of this section.

(i) The ASD(HD&ASA) shall issue guidance to ensure that the assistance provided under paragraph (f) of this section is in accordance with applicable provisions of law, including:

(A) 10 U.S.C. 372, 377, 2576, and 2667.

(B) 31 U.S.C. 1535 (also known and referred to in this part as “The Economy Act of 1932, as amended”) and 31 U.S.C. 6501–6508 (also known as “The Intergovernmental Cooperation Act of 1968, as amended”).

(C) Title 40, U.S.C.

(D) 41 U.S.C. 102–103, 105–115, 151–153, 3101, 3105, 3301, 3303–3305, 3509, 3901, 3905–3906, 4501–4506, 4701, and 6101.

(E) 44 U.S.C. chapters 21, 25, 29, and 31.

(ii) The ASD(HD&ASA) guidance shall also ensure compliance with DoD

Instruction 4165.70,<sup>29</sup> “Real Property Management,” and DoD Directive 5410.12,<sup>30</sup> “Economic-Adjusted Assistance to Defense-Impacted Communities,” and other guidance that may be issued by the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense.

(2) *Limitations on the use of personnel.* The DoD Components shall follow the guidance in paragraph (a)(1)(iv) of this section in considering requests for DoD personnel to operate or maintain, or to assist in operating or maintaining, equipment made available according to paragraph (f)(1) of this section.

(3) *Military readiness.* Assistance may not be provided under paragraph (f) of this section if such assistance could adversely affect military preparedness. Each request shall be evaluated using the criteria provided in 32 CFR part 185 for evaluating legality, lethality, risk, cost, appropriateness, and readiness. The implementing documents issued by the DoD Components shall ensure that approval for the disposition of equipment is vested in officials who can assess the effect of such disposition on military preparedness.

(4) *Approval authority.* (i) Requests by civilian law enforcement officials for DoD assistance for the use of DoD equipment and facilities shall be forwarded to the appropriate approval authority under the guidance in this section. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority. Requests will be forwarded and processed according to the urgency of the situation.

(A) Requests for the use of equipment or facilities outside the United States, other than for arms, ammunition, combat vehicles, vessels, and aircraft, shall be considered in accordance with procedures established by the applicable DoD Component.

(B) Requests from other Federal agencies to purchase equipment (permanent retention) from a DoD Component, that are accompanied by appropriate funding documents, may be submitted directly to the DoD Component concerned.

(C) Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded in accordance with paragraph (a)(5) of this section.

(D) For loans pursuant to 31 U.S.C. 1535 and 6501–6508, which are limited

<sup>24</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001p.pdf>.

<sup>25</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/524001r.pdf>.

<sup>26</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/516068p.pdf>.

<sup>27</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/540011p.pdf>.

<sup>28</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/451513r.pdf>.

<sup>29</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/416570p.pdf>.

<sup>30</sup> Available at <http://www.dtic.mil/whs/directives/corres/pdf/541012p.pdf>.

to agencies of the Federal Government, and for leases pursuant to 10 U.S.C. 2667, which may be made to entities outside the Federal Government, this guidance applies:

(1) Requests for arms, ammunition, combat vehicles, vessels, and aircraft shall be submitted to the Secretary of Defense for approval.

(2) Requests for loan or lease or other use of equipment or facilities are subject to approval by the heads of the DoD Components, unless approval by a higher official is required by statute or DoD issuance applicable to the particular disposition.

(ii) The Heads of the DoD Components shall issue implementing policy and direction for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by paragraphs (f)(4)(i)(D)(1) and (f)(4)(i)(D)(2) of this section. Such implementing policy and direction shall ensure compliance with applicable law and DoD issuances, including requiring specific levels of approval with respect to particular dispositions.

(g) *Funding.*

(1) *General.* Reimbursement is required when equipment or services are provided to agencies outside DoD.

(i) The primary sources of reimbursement requirements are the Economy Act of 1932, as amended, for provision of equipment or services to Federal departments and agencies and 10, U.S.C. 2667. 10 U.S.C. 377 requires reimbursement unless the Secretary of Defense elects to waive reimbursement using the criteria described in paragraph (g)(2)(iii) of this section.

(ii) Other statutes may apply to particular types of assistance or may apply to assistance to specific civilian law enforcement entities. Payment of fair market value under 10 U.S.C. 2667 may only be waived under the provisions of 10 U.S.C. 2667.

(iii) A requirement for reimbursement does not apply when DoD Components provide information, collected during the normal course of military training or operations, to Federal, State, or local civilian law enforcement agencies pursuant to 10 U.S.C. 371.

(2) *Procedural requirements.* (i) Defense support of civilian law enforcement agencies is normally an unprogrammed requirement for DoD. DoD 7000.14-R,<sup>31</sup> "Department of Defense Financial Management Regulations (FMRs)," Volumes 1–15, prescribes procedures for financing and reporting costs. DoD Components shall comply with these procedures and shall

consider the factors presented in paragraph (g)(2)(iii) of this section to determine or recommend whether financing is to be accomplished on a reimbursable or non-reimbursable basis.

(ii) The Commanders of USNORTHCOM, USPACOM, and USSOCOM shall serve as the financial managers responsible for DoD oversight of all operations executed in their areas of responsibility in accordance with § 182.5(k).

(iii) The Secretary of Defense may waive reimbursement for DoD support to civilian law enforcement agencies provided pursuant to 10 U.S.C. 18, or support provided by NG personnel performing duty pursuant to 32 U.S.C. 502(f), in accordance with 10 U.S.C. 377, if such support:

(A) Is provided in the normal course of DoD training or operations; or

(B) Results in a benefit to the DoD element or the NG personnel providing the support that is substantially equivalent to that which would otherwise be obtained from military operations or training.

(3) *Personnel duty status.* Funding for State active duty of NG personnel is the responsibility of the State involved.

Dated: March 8, 2013.

**Patricia L. Toppings,**  
*OSD Federal Register Liaison Officer,*  
*Department of Defense.*

[FR Doc. 2013-07802 Filed 4-11-13; 8:45 am]

**BILLING CODE 5001-06-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2013-0041]

RIN 1625-AA09

#### **Drawbridge Operation Regulation; Green River, Small-house, KY and Black River, Jonesboro, LA**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the drawbridges across Green River, mile 79.6, Small-house, KY and Black River, mile 41.0, Jonesboro, LA. The Green River bridge was removed in 2008 and the Black River bridge was replaced with a fixed bridge in 2008 and the operating regulations are no longer applicable or necessary.

**DATES:** This rule is effective April 12, 2013.

**ADDRESSES:** Documents mentioned in this preamble are part of docket [USCG-2013-0041]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Eric Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, email [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Regulatory History and Information**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the CSX Transportation Railroad bridge, that once required draw operations in 33 CFR 117.415(b), was removed from the waterway in 2008 and the US84 bridge, that once required draw operations in 33 CFR 117.427, was removed from the waterway and replaced with a fixed bridge in 2008. Therefore, the regulations are no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(1), a rule that relieves a restriction is not required to provide the 30 day notice period before its effective date. This rule removes the CSX Transportation Railroad bridge draw operation requirements under 33

<sup>31</sup> Available at <http://comptroller.defense.gov/fmr/>.