

# DSCA PRIMER AND DOMOPS UPDATE

MAJ Chris Ryan

National Guard Bureau



# AGENDA

- **Homeland Defense and Civil Support**
- **DoD Involvement in DSCA**
- **DoD Authorities**
- **Domestic Constraints on DoD**
  - **10th Amendment**
  - **Posse Comitatus Act (PCA)**
- **Stafford Act (Non-Law Enforcement Assistance)**
- **NGCC**

# HOMELAND SECURITY MISSION

- **Homeland Defense** – the protection of U.S. sovereignty, territory, domestic population, and critical defense infrastructure against external threats and aggression, or other threats as directed by the President. It is generally considered to consist of war-fighting missions led by the DoD. Examples include combat air patrols and maritime defense operations.
- **Civil Support** – support to authorities for domestic emergencies and other designated activities. Examples include disaster response, counterdrug support, and support to civilian law enforcement.

# DoD AND NATIONAL RESPONSE

## “LEAD, SUPPORT, ENABLE”

- **Lead**: Defend the U.S. from attack (“Homeland Defense”)
- **Support**: At the direction of the President or the Secretary of Defense, provide defense support of civil authorities (DSCA or “civil support”)
- **Enable**: Enhance capabilities and contributions of domestic and foreign partners

# DOD UNITS IN THE “DSCA” FIGHT

- ↘ U.S. NORTHCOM, U.S. PACOM, U.S. SOUTHCOM
- ↘ ARMY NORTH, Fort Sam Houston, TX
- ↘ AIR FORTH NORTH, Tyndall AFB, Panama City, FL
- ↘ JTF-CS, Fort Eustis, VA
- ↘ JFHQ-NCR, Fort McNair, DC
- ↘ JTF-ALASKA, Joint Base Elmendorf-Richardson, AK
- ↘ JTF-NORTH, Biggs Army Airfield, Fort Bliss, TX
- ↘ U.S. FLEET FORCES COMMAND, Norfolk, VA
- ↘ National Guard
- ↘ Coast Guard (DHS)



# NATIONAL GUARD



- Army and Air
- Title 32
- State Active Duty
- Homeland Defense Missions
  - WMD/CST
  - CERFP



# COAST GUARD

- ✦ Military/Multi-Mission/Maritime
- ✦ Armed Force – Titles 10, 50
- ✦ Law Enforcement Agency – Titles 6, 14
- ✦ Regulator – Titles 19, 33, 46, 49
- ✦ Under DHS but fully integrated with DoD (NORTHCOM, SOUTHCOM, JIATF-S, CLAMO, DOJ/ETC.)
- ✦ 14 U.S.C. 141- can help Federal, State or Local Authorities

# PRIMARY FEDERAL AUTHORITIES

- ✦ **Presidential Authority**
  - ✦ **The U.S. Constitution** (Articles II and IV)
  - ✦ **Statutory Authority:** *i.e.*, **KATRINA = Stafford Act** (“emergency” or “major disaster” declaration); **Deepwater Horizon:** POTUS has delegable authority under Oil Spill Pollution Act of 1990
- ✦ **Secretary of Defense (SECDEF) Authority**
  - ✦ Military CDR’s / DOD Civilian Official’s **Immediate Response Authority** and MIL CDR’s **Emergency Authority** (for *extreme* civil disturbances)
  - ✦ **Mutual Aid Agreements** and **Memorandums of Understanding** Authority



# POSSE COMITATUS ACT

18 U.S.C. 1385

*“Whoever, except [as] expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or Air Force as a posse comitatus or otherwise to execute the laws shall be fined . . . or imprisoned . . . .”*

Criminal Statute –  
No Record of  
Prosecutions

No NAVY/USMC –  
but see 10 USC 375  
& DODD 5525.5

USAR & USAFR=Yes  
Nat Guard = check  
duty status

Coast Guard – No; but  
see limits on USCG LE  
authority & unique  
“assistance” authority

# TO WHOM DOES THE PCA APPLY?

- Active duty Army
- Active duty Air Force
  - US Army Reserve?
  - US Air Force Reserve?
  - Army National Guard?
  - Air National Guard?



# TO WHOM DOES THE PCA APPLY?

- Reservists and National Guard?
  - Reservists (USAR, USNR, USMCR, USAFR):
    - YES, if in a duty status
  - National Guard:
    - NO, if under State control (Title 32 or SAD)
    - YES, if in Federal (Title 10) status

# TO WHOM DOES THE PCA APPLY?

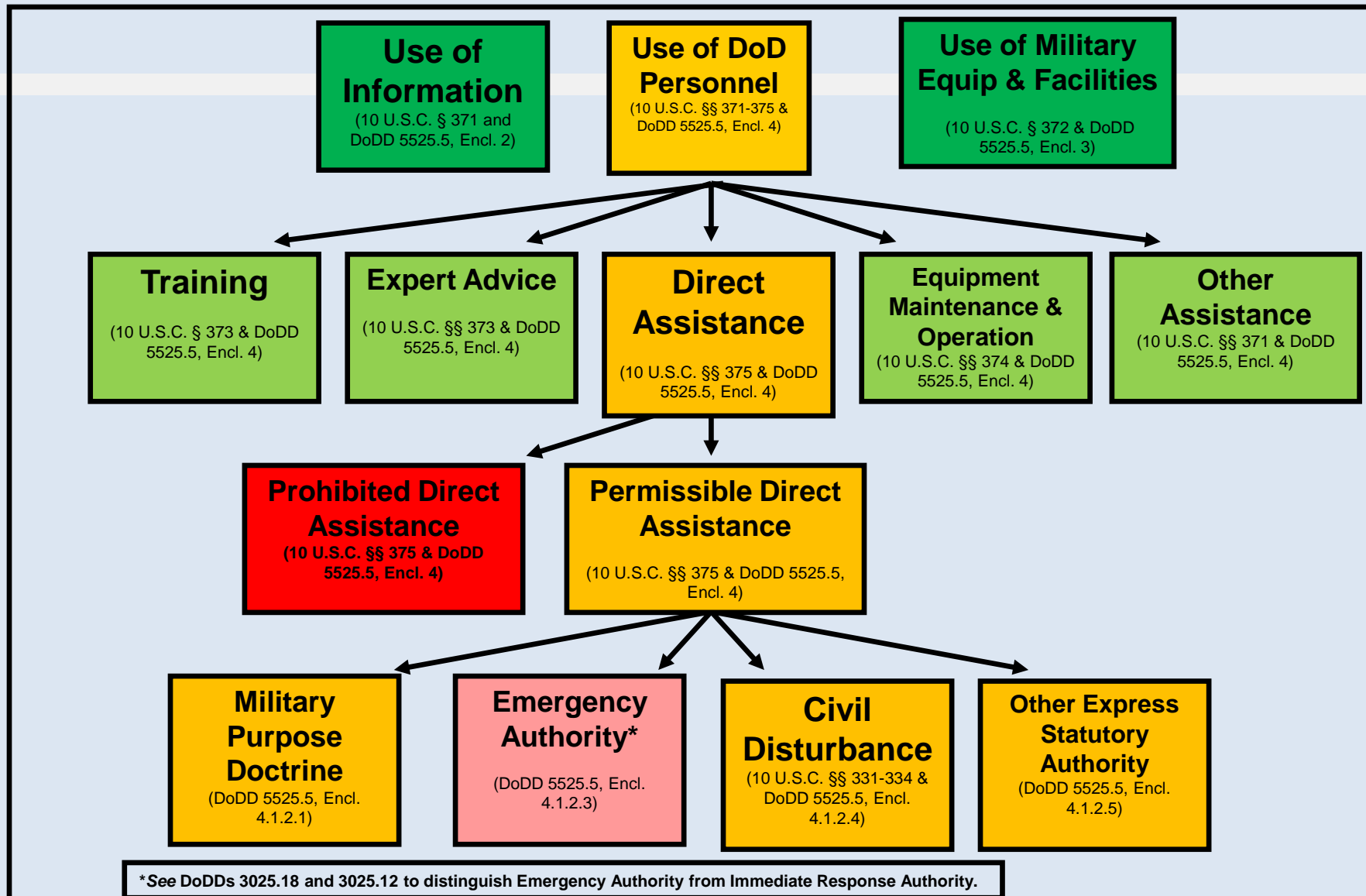
- Active duty Navy/Marines?
  - **YES**, by Policy not Law

# CROSSING THE LINE?

## DIFFERENT FEDERAL COURT TESTS TO CONSIDER

1. Is military involvement “active or passive”?
2. Do military personnel pervade the activities of civilian law enforcement?
3. Do military personnel subject citizens to military power that is regulatory, proscriptive, or compulsory?
  - Regulatory: controls or directs
  - Proscriptive: prohibits or condemns
  - Compulsory: exerts coercive force

# PCA APPLICABILITY



# DOD AUTHORITIES

DoDD 3025.18 and DoDI 6055.06

## *IMMEDIATE RESPONSE AUTHORITY (IRA)*

- **In response to a request for assistance from a civil authority, under “imminently serious conditions” where time does not permit approval from higher authority, military commanders may respond to save lives, prevent human suffering, or mitigate great property damage**
- **Cannot perform law enforcement functions**
- **72-hour rule (from the time the request for assistance is received) requires reassessment of necessity to continue IRA operations and coordination with geographical Combatant Commander (COCOM)**

# EXAMPLES OF IRA ASSISTANCE

- Search, rescue, evacuation, and emergency medical treatment
- Emergency restoration of essential public services
- Emergency clearance of debris and explosive ordnance
  - \*\*Recovery, identification, registration, disposal of the dead in coordination with local medical examiner/coroner
- Monitoring and decontamination of radiological, chemical, and biological effects, and control of contaminated areas
- Roadway movement control and planning
- Collection and distribution of food and essential supplies
  - \*\*Damage assessment to include providing aerial reconnaissance.
- Emergency interim communications assistance
- Facilitate reestablishment of governmental functions
- Other actions to **save lives, prevent suffering, mitigate great property damage**

\*\* Subject to DOD policy guidance

Rescue-Evac  
Emergency  
Med Services

Restore  
Power, H2O,  
Infrastructure

Food -Supply  
Distribution



# DOD AUTHORITIES

DoDD 3025.18 and DoDI 6055.06

## *MUTUAL AID AGREEMENTS / MOU AUTHORITY*

- DoD Components are encouraged to enter into **Mutual Aid Agreements** with local fire protection agencies for fire and emergency services.
- Assistance may be provided on a reimbursement basis. Absent an agreement, installation commanders may render F&ES to preserve life & property near the installation under IRA.
- **MOU Authority** details relationship between military policy and local law enforcement regarding service of process, arrest and investigation authority, etc.

# APPROVAL AUTHORITIES

## DoDD 3025.18

- **SECDEF**. Unless approval authority is otherwise delegated by the Secretary of Defense, all DSCA requests shall be submitted to the office of the Executive Secretary of the Department of Defense. ¶4(d)
- **ASD(HD&ASA)**. As delegated by the Secretary of Defense in accordance with DoDD 5111.13, shall serve as approval authority for requests for assistance from civil authorities or qualifying entities sent to the Secretary of Defense, except for those items retained in paragraphs 4(j) [civil disturbances, CBRNE events, and support to civilian law enforcement] and 4(o) [use of unmanned aircraft systems for DSCA operations]. Enclosure 2
- **Combatant Commander**. See Standing DSCA EXORD (Sep 10)

# CJCS DSCA STANDING EXORD

10 SEPTEMBER 2010

**In the CJCS Standing DSCA EXORD, the SECDEF has established a framework for the deployment and employment of DoD resources using four categories:**

- **Category 1**: SECDEF authorizes Supported Combatant Commander (CCDR) to deploy and employ “assigned and allocated forces.”
- **Category 2**: SECDEF authorizes Supported CCDRs to deploy and employ certain “pre-identified resources.”
- **Category 3**: SECDEF authorizes Supported CCDRs to deploy and employ DoD “resources for internal use” only.
- **Category 4**: SECDEF retains authority to approve deployment and employment of DoD “large-scale response resources.”

***“The purpose of this EXORD is to delegate limited approval authority to supported Combatant Commanders, who have DSCA responsibilities, for routine primary agency (PA) requests for assistance (RFA), including the types of RFA historically submitted by PA, to provide a rapid and flexible DoD response to federal primary agencies for potential or actual emergencies and /or disasters within the United States . . . .”***

# ANALYSIS UNDER DOD DIRECTIVE 3025.18

## **DoDD 3025.18 Requires Evaluation of the Following Key Criteria in Responding to Civilian RFAs:**

**Legality** – Compliance with laws

**Lethality** – Potential use of lethal force by or against DoD forces

**Risk** – Safety of DoD forces

**Cost** – Who pays, impact on DoD budget

**Appropriateness** – Whether the requested mission is in the interest of DoD to conduct

**Readiness** – Impact on the DoD/installation/unit capacity to perform its primary mission (training impact, maintenance issues, operational missions)

NOTE: Historically when DoD has pushed back it has been based on READINESS or LEGAL concerns

# CONSTRAINTS ON DOD WITHIN THE DOMESTIC OPERATING ENVIRONMENT

- Federalism – 10th Amendment
- Posse Comitatus Act (PCA)

# FEDERALISM

## THE 10<sup>TH</sup> AMENDMENT

“The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.”

- Reserved Powers include the **Police Power**
- Under its Police Power, each State has the primary responsibility to prepare for and respond to disasters/ emergencies within its borders
- As a general rule, the Federal government must wait for a State to request assistance. **When Federal assistance includes participation by DoD, we must go out of the gate under proper authority. Therefore, it is important to always remember and review DoD's primary authorities.**

# DSCA ANALYSIS CONSIDERATIONS

- ✦ Step 1 – Has there been a request for assistance from civil authorities?
- ✦ Step 2 – Is there time to seek approval from the chain of command, specifically the Secretary of Defense?
- ✦ Step 3 – Have you and your commander evaluated the request for assistance under the criteria established under DoD Directive 3025.18?
  - ✦ Legality, Lethality, Risk, Cost, Appropriateness, and Readiness
- ✦ Step 4 – If you decide to respond under IRA, what do you need to do next?
- ✦ Step 5 – How long can you help?

# ANALYSIS UNDER DoD DIRECTIVE 3025.18

## **DoDD 3025.18 Requires Evaluation of the Following Key Criteria in Responding to Civilian Requests For Assistance:**

**Legality** – Compliance with laws

**Lethality** – Potential use of lethal force by or against DoD forces

**Risk** – Safety of DoD forces

**Cost** – Who pays, impact on DoD budget

**Appropriateness** – Whether the requested mission is in the interest of DoD to conduct

**Readiness** – Impact on the DoD/installation/unit capacity to perform its primary mission (training impact, maintenance issues, operational missions)

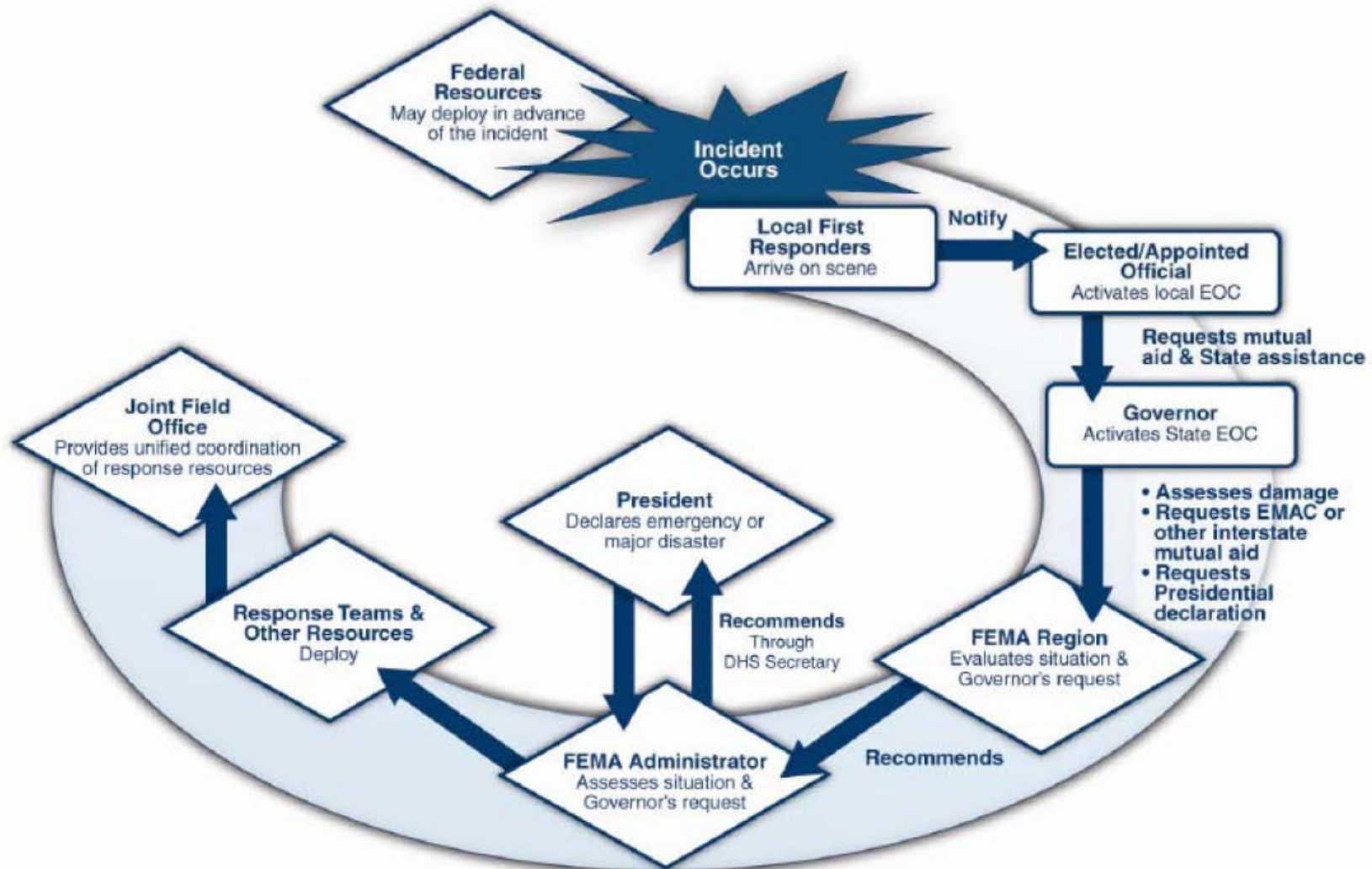


# ROBERT T. STAFFORD RELIEF AND EMERGENCY ASSISTANCE ACT

- Codified at 42 U.S.C. 5121—5206.
- Authorizes the President to issue an emergency declaration (*sua sponte* or post-state req) or a major disaster (post-state req).
- Identifies FEMA as “LFA,” Lead Federal Agency.
- Differentiates a “major disaster” from an “emergency.” Think long/short term. Think unlimited assistance w/cost sharing b/w feds and state v. generally a \$5 million cap.
- A key legal authority for DoD assistance in DSCA—but not the only, e.g. PHSA, CERCLA, CWA & OPA-90, etc.

# NATIONAL RESPONSE DOCTRINE

## STAFFORD ACT PROCESS



# NATIONAL RESPONSE FRAMEWORK FOR CIVIL SUPPORT

## STATE RESPONSE



REQUEST FOR ASSISTANCE



ASSISTANCE

## FEDERAL RESPONSE



PRIMARY AGENCY



REQUEST FOR ASSISTANCE

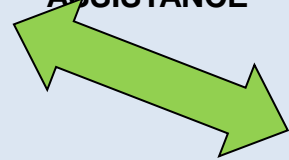
## DOD RESPONSE



**NORTHCOM**



**SUPPORT AS DIRECTED**



**LOCAL FIRST-RESPONDERS**



**STATE ASSETS**



**EMAC**

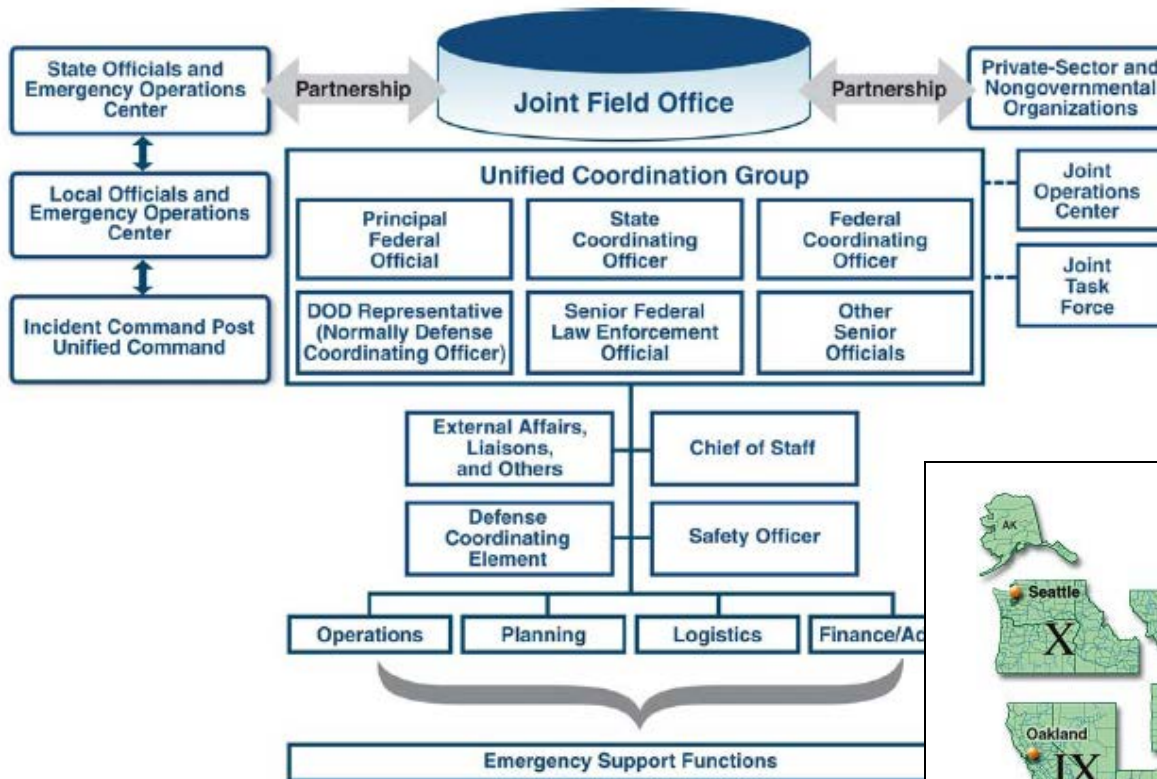
20



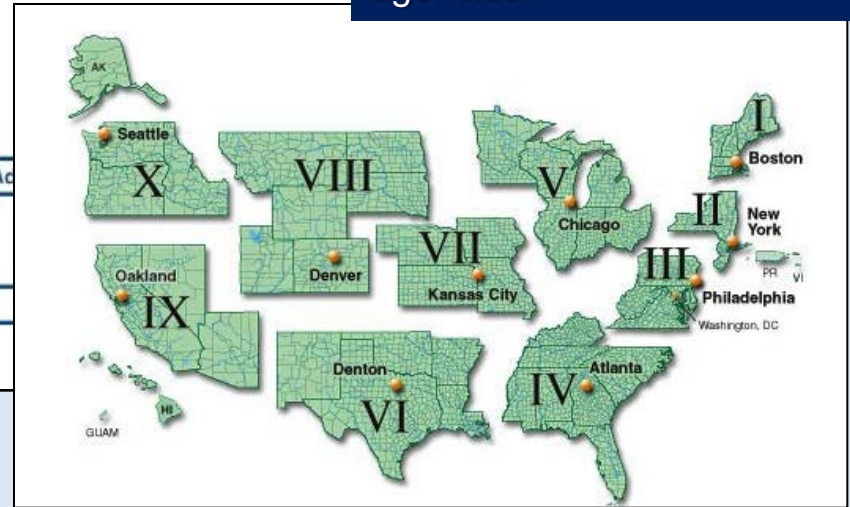
# NATIONAL RESPONSE FRAMEWORK

## Defense Coordinating Officer

Figure 8. Joint Field Office



A permanently assigned Defense Coordinating Officer and Element (DCO/E) is now in each of the ten FEMA regions in order to plan, coordinate, and integrate DSCA with local, state and federal agencies.



# ROADMAP REVIEW

- ✦ **Homeland Defense and Civil Support**
- ✦ **DoD Involvement in DSCA**
- ✦ **DoD Authorities**
- ✦ **Domestic Constraints on DoD**
  - ✦ **10th Amendment**
  - ✦ **Posse Comitatus Act (PCA)**
- ✦ **Stafford Act**

# BOTTOM LINE

- DoD involvement domestically is the exception, not the rule; DoD usually subordinate to civilian authority; domestic use of DoD personnel & resources tightly controlled by statute and regs
- Remember Stafford Act and Posse Comitatus Act

# UPDATE

- Arming the National Guard
- Domestic UAS guidance (02/15)
- Updated DoDI 1215.06
- Guard's Role in Cyber.

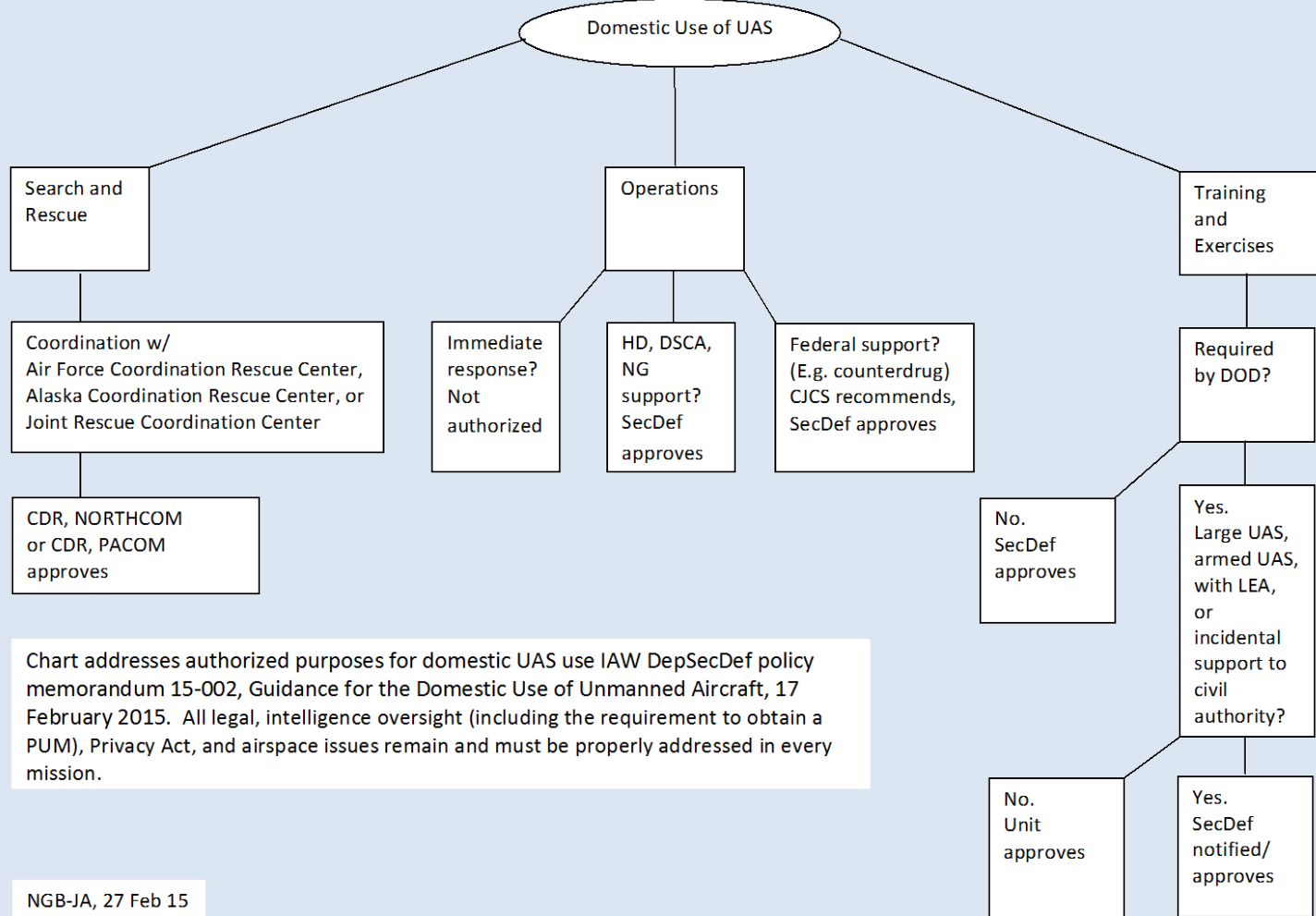
# ARMING THE GUARD

Title 32: States/territories may generally arm NG personnel in a T32 status with government-issued weapons and ammunition for force protection purposes.

State Active Duty: Members performing duty in a state active duty status are state funded/controlled and subject to state laws and policies. IAW NGR 500-5 para 5-5c, State Adjutants General have authority to use federal property issued to the National Guard of their state during periods of civil disturbance and other emergency conditions declared by the governor.



# DOMESTIC UAS



# DODI 1215.06 (CH 1, 19 MAY 15)

- ENCL 3, 4.A(1) *AT will not be performed in response to an emergency by order of the governor in support of civil authorities, including those emergencies when a presidentially declared disaster qualifies a State for reimbursement of associated preparation or recovery costs through a lead federal agency. By exception, AT may be used in response to a State or federal emergency that occurs during a pre-planned annual training event when, at the discretion of the Adjutant General, the work performed satisfies or complements the unit's wartime mission or annual training objectives.*



# CYBER

- Cyber Protection Team
  - 39 personnel
  - 1 x T10
  - 10 x T32
- Computer Network Defense Team
  - 1 x all 54 jurisdictions
- Limits and Lawyers
  - Legal Operational and jurisdictional limits
  - Legal training

# DSCA / DOMOPS RESOURCES


## THE CENTER FOR LAW AND MILITARY OPERATIONS (CLAMO)

**DOMESTIC OPERATIONAL LAW**  
2013 Handbook  
for Judge Advocates



*The Deepwater Horizon oil spill-April 20, 2010*

The Judge Advocate General's Legal Center and School  
U.S. Army  
Center for Law and Military Operations (CLAMO)  
Charlottesville, Virginia 22903-1781



### DOMOPS Reference Materials

- <https://www.jagcnet.army.mil/8525751D00557EFF/0/E2302B7AD264FD018525784000546FA6?opendocument>
- Library of Congress Military Legal Resources at: [http://www.loc.gov/rr/frd/Military\\_Law/CLAMO.html](http://www.loc.gov/rr/frd/Military_Law/CLAMO.html)
- **General DoD References**
- **Posse Comitatus & DoD Policy References**
- **National Policy Materials & Interagency Pubs**
- **Other Important Statutory References**
- **Interagency Contact Information**