



Department of Defense
DIRECTIVE

AD-A272 130



January 15, 1986
NUMBER 5525.5

ASD (FM&P)

SUBJECT: DoD Cooperation with Civilian Law Enforcement Officials

References: (a) through (ll), see enclosure 1

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update uniform DoD policies and procedures to be followed with respect to support provided to Federal, State, and local civilian law enforcement efforts; and assigns responsibilities.

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Organization of the Joint Chiefs of Staff (OJCS), the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as DoD Components). The term "Military Service," as used herein, refers to the Army, Navy, Air Force, and Marine Corps.

2. DoD policy on assistance to law enforcement officials in foreign governments is not governed by this Directive except as specified by other DoD issuances.

C. DEFINITIONS

1. Civilian Agency. An agency of one of the following jurisdictions:

a. The United States (other than the Department of Defense, but including the U.S. Coast Guard). This includes U.S. agencies in international areas dealing with U.S. flag vessels or aircraft in violation of U.S. law.

b. A State (or political subdivision of it) of the United States.

c. Commonwealth, Territory, or Possession (or political subdivision of it) of the United States.

2. Civilian Law Enforcement Official. An officer or employee of a civilian agency with responsibility for enforcement of the laws within the jurisdiction of that agency.

3. DoD Intelligence Component. An organization listed in subsection C.4. of DoD Directive 5240.1 (reference (b)).

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D. POLICY

It is DoD policy to cooperate with civilian law enforcement officials to the extent practical. The implementation of this policy shall be consistent with the needs of national security and military preparedness, the historic tradition of limiting direct military involvement in civilian law enforcement activities, and the requirements of applicable law, as developed in enclosures 2 through 7.

E. RESPONSIBILITIES

1. The Assistant Secretary of Defense (Force Management and Personnel) (ASD(FM&P)) shall:

a. Coordinate with civilian law enforcement agencies on long range policies to further DoD cooperation with civilian law enforcement officials.

b. Provide information to civilian agencies and The National Narcotics Border Interdiction System (NNBIS) to facilitate access to DoD resources.

c. Coordinate with the Department of Justice, the Department of Transportation (U.S. Coast Guard), and the Department of the Treasury (U.S. Customs Service) and represent the Department of Defense on interagency organizations regarding matters involving the interdiction of the flow of illegal drugs into the United States.

d. Develop guidance and, as required, take other actions as specified in enclosures 2 through 7, taking into account the requirements of DoD intelligence components and the interests of the Assistant Secretary of Defense (Health Affairs) (ASD(HA)) and the Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)).

e. Inform the ASD(RA) of all requests for and taskings concerning National Guard and Reserve personnel and resources in support of civilian law enforcement.

f. Modify the sample report formats at enclosures 6 and 7.

2. The Inspector General of the Department of Defense (IG, DoD) shall issue guidance on cooperation with civilian law enforcement officials with respect to audits and investigations conducted, supervised, monitored, or initiated under DoD Directive 5106.1 (reference (c)), subject to coordination with the General Counsel.

3. The Assistant Secretary of Defense (Reserve Affairs) (ASD(RA)) shall:

a. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact on military preparedness of any request for assistance from units of the National Guard and Reserve.

b. At the request of the Secretary of Defense or the ASD(FM&P), determine the impact on military preparedness of any request for military assistance from units of the National Guard and Reserve.

4. The Secretaries of the Military Departments and the Directors of the Defense Agencies, as appropriate, shall:

a. Disseminate the guidance issued by the ASD(FM&P) under paragraph E.1.d., above.

b. Review training and operational programs to determine how and where assistance can best be provided civilian law enforcement officials consistent with the policy in section D., above. This review should identify those programs under which reimbursement would not be required under enclosure 5.

c. Issue implementing documents incorporating the guidelines and procedures of this Directive, including the following:

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

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

(3) Guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.

d. Inform the Joint Chiefs of Staff (JCS), through ASD(FM&P) of all requests for and taskings in support of civilian law enforcement that involve the resources of a Unified or Specified Command, which, if provided, could have significant impact on military preparedness or national security.

5. The Director, National Security Agency/Chief, Central Security Service (DIRNSA/CHCSS) shall establish appropriate guidance for the National Security Agency/Central Security Service (NSA/CSS).

6. The Joint Chiefs of Staff shall:

a. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact of requests for assistance on national security and military preparedness.

b. Provide advice on the impact on national security and military preparedness of any request for military assistance at the request of the Secretary of Defense, the ASD(FM&P), the Secretaries of the Military Departments, the Directors of Defense Agencies, or the Commanders of the Unified and Specified Commands.

F. INFORMATION REQUIREMENTS

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the ASD(FM&P), the General Counsel, the ASD(HA), and the ASD(RA), not later than 30 days after the end of each

quarter. The report will show action taken (approval, denial, or pending) and other appropriate information. This information requirement has been assigned Report Control Symbol DD-FM&P(Q)1595. Actions involving the use of classified information or techniques may be exempted from such report with the concurrence of the ASD(FM&P) if it is impractical to prepare an unclassified summary. The sample format at enclosure 7 will be used to record all aviation assistance.

G. RELEASE OF INFORMATION

1. Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. The Military Departments and the Directors of the Defense Agencies may release such information, however, when approved under the procedures established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned. To the extent possible, the affected civilian law enforcement agencies shall be consulted before releasing such information.

2. When assistance is provided under this Directive, such assistance may be conditioned upon control by the Secretaries of the Military Departments and Directors of the Defense Agencies before information is released to the public.

H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

William H. Taft, IV

William H. Taft, IV
Deputy Secretary of Defense

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Enclosures - 7

1. References
2. Use of Information Collected During Military Operations
3. Use of Military Equipment and Facilities
4. Restrictions on Participation of DoD Personnel
in Civilian Law Enforcement Activities
5. Funding
6. Sample Format for Preparing, "Report on Support to
Civilian Law Enforcement (RCS DD-FM&P(Q) 1595)"
7. Aviation Assistance to Law Enforcement Agencies (Sample
Format)

REFERENCES

- (a) DoD Directive 5525.5, subject as above, March 22, 1982 (hereby canceled)
- (b) DoD Directive 5240.1, "Activities of DoD Intelligence Components that Affect U.S. Persons," December 3, 1982
- (c) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
- (d) Title 10, United States Code (10 U.S.C.), §§331-334, 337, 371-378, 2576, and 2667; and Chapter 47 (Uniform Code of Military Justice)
- (e) DoD Directive 5200.27, "Acquisition of Information Concerning Persons and Organizations not Affiliated with the Department of Defense," January 7, 1980
- (f) DoD 5240.1-R, "Procedures Governing the Activities of DoD Intelligence Components that Affect United States Persons," December 1982, authorized by reference (b)
- (g) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
- (h) DoD 4515.13-R, "Air Transportation Eligibility," January 1980, authorized by DoD Directive 4515.13, June 26, 1979
- (i) Public Law, "The Economy Act," (31 U.S.C. §1535)
- (j) Public Law, "The Intergovernmental Cooperation Act of 1968," (40 U.S.C. §§531-535 and 42 U.S.C. §§4201, 4211-4214, 4221-4225, 4231-4233, 4241-4244)
- (k) Public Law, "Federal Property and Administrative Services Act of 1949," (40 U.S.C. §§471-476, 481, 483, 483c, 484-492, 512, 514, 531-535, 541-544, 751-759; 41 U.S.C. §§5, 251-255, 257-260; 44 U.S.C., Chapters 21, 25, 29, 31; and 50 U.S.C. Appendix 1622)
- (l) DoD Directive 3025.12, "Employment of Military Resources in the Event of Civil Disturbances," August 19, 1971
- (m) DoD Instruction 4160.23, "Sale of Surplus Military Equipment to State and Local Law Enforcement and Firefighting Agencies," January 27, 1981
- (n) DoD Instruction 4160.24, "Disposal of Foreign Excess Personal Property for Substantial Benefits or the Discharge of Claims," July 24, 1981
- (o) DoD Directive 4165.6, "Real Property Acquisition, Management and Disposal," December 22, 1976
- (p) DoD Directive 4165.20, "Utilization and Retention of Real Property," January 31, 1985
- (q) DoD Directive 5410.12, "Economic Adjustment Assistance to Defense-Impacted Communities," April 21, 1973
- (r) DoD Instruction 7230.7, "User Charges," January 29, 1985
- (s) DoD Instruction 7310.1, "Disposition of Proceeds from Sales of DoD Excess and Surplus Personal Property," November 15, 1984
- (t) DoD Instruction 7730.53, "Specialized or Technical Services Provided to State and Local Government," December 23, 1982
- (u) DoD Directive 5030.46, "Assistance to the District of Columbia Government in Combating Crime," March 26, 1971
- (v) Public Law, "Posse Comitatus Act," (18 U.S.C. §1385)
- (w) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding Between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes," January 22, 1985
- (x) Title 5, United States Code, Appendix 3, Section 8(g)
- (y) Title 16, United States Code, §§23, 78, 593, and 1861(a)
- (z) Title 18, United States Code, §§112, 351, 831, 1116, 1751, and 3056; "Presidential Protection Assistance Act of 1976," Public Law 94-524, 90 Stat. 2475

REFERENCES, continued

- (aa) Title 22, United States Code, §§408 and 461-462
- (bb) Title 25, United States Code, §180
- (cc) Title 42, United States Code, §§97, 1989, and 3789
- (dd) Title 43, United States Code, §1065
- (ee) Title 48, United States Code, §§1418, 1422, and 1591
- (ff) Title 50, United States Code, §220
- (gg) Public Law, "The Controlled Substances Act," (21 U.S.C. §801 et seq.)
- (hh) Public Law, "The Controlled Substances Import and Export Act,"
(21 U.S.C. §951 et seq.)
- (ii) Public Law, "The Immigration and Nationality Act," (8 U.S.C. §§1324-1328)
- (jj) Title 19, United States Code §1401 (The Tariff Act of 1930) and §1202
(Tariff Schedules of the United States)
- (kk) Title 21, United States Code §873(b)
- (ll) DoD 7220.9-M, "Department of Defense Accounting Manual," October 1983,
authorized by DoD Directive 7220.9

USE OF INFORMATION COLLECTED DURING MILITARY OPERATIONS

A. ACQUISITION AND DISSEMINATION

Military Departments and Defense Agencies 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 any Federal or State law within the jurisdiction of such officials. The Secretaries of the Military Departments and Directors of the Defense Agencies shall prescribe procedures for releasing information upon reasonable belief that there has been such a violation.

1. The assistance provided under this enclosure shall be in accordance with 10 U.S.C. §371 (reference (d)) and other applicable laws.

2. The acquisition and dissemination of information under this enclosure shall be in accordance with DoD Directive 5200.27 (reference (e)), DoD Directive 5240.1 (reference (b)), and DoD 5240.1-R (reference (f)).

3. Military Departments and Defense Agencies shall establish procedures for "routine use" disclosures of such information in accordance with DoD Directive 5400.11 (reference (g)).

4. Under guidance established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned, the planning and execution of compatible military training and operations may take into account the needs of civilian law enforcement officials for information when the collection of the information is an incidental aspect of training performed for a military purpose. In this regard, the needs of civilian law enforcement officials may be considered when scheduling routine training missions. 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. Local 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 (reference (h)).

5. Under procedures established by the Secretaries of Military Departments and the Directors of the Defense Agencies concerned, information concerning illegal drugs that is provided to civilian law enforcement officials under this provision (reference (f)) may be provided to the El Paso Intelligence Center.

6. Nothing in this section modifies DoD policies or procedures concerning dissemination of information for foreign intelligence or counterintelligence purposes.

7. The Military Departments and Defense Agencies are encouraged to participate in Department of Justice Law Enforcement Coordinating Committees situated in each Federal Judicial District.

8. The assistance provided under this enclosure may not include or permit direct participation by a member of a Military Service in the interdiction of a vessel, aircraft, or a land vehicle, a search or seizure, arrest, or other similar activity unless participation in such activity by the member is otherwise authorized by law. See enclosure 4.

B. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if it could adversely affect national security or military preparedness.

C. FUNDING

To the extent that assistance under this enclosure requires Military Departments and Defense Agencies to incur costs beyond those that are incurred in the normal course of military operations, the funding provisions of enclosure 5 apply.

USE OF MILITARY EQUIPMENT AND FACILITIES

A. EQUIPMENT AND FACILITIES

Military Departments and Defense Agencies 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 this enclosure.

1. The ASD(FM&P) shall issue guidance to ensure that the assistance provided under this enclosure is in accordance with applicable provisions of 10 U.S.C. §§372, 2576, and 2667 (reference (d)); the Economy Act (reference (i)); the Intergovernmental Cooperation Act of 1968 (reference (j)); the Federal Property and Administrative Services Act of 1949 (reference (k)); and other applicable laws.

2. The guidance in subsection A.1., above, shall ensure that the following Directives are complied with: DoD Directive 3025.12 (reference (l)); DoD Instruction 4160.23 (reference (m)); DoD Instruction 4160.24 (reference (n)); DoD Directive 4165.6 (reference (o)); DoD Directive 4165.20 (reference (p)); DoD Directive 5410.12 (reference (q)); DoD Instruction 7230.7 (reference (r)); DoD Instruction 7310.1 (reference (s)); DoD Instruction 7730.53 (reference (t)); and other guidance that may be issued by the ASD(FM&P) and the Assistant Secretary of Defense (Comptroller) (ASD(C)).

3. The assistance provided by DoD Intelligence Components is subject to DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

B. LIMITATIONS ON THE USE OF PERSONNEL

1. A request for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under section A., above, shall be considered under the guidance in subsection A.6. (enclosure 4).

2. Personnel in DoD intelligence components also are subject to the limitations in DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

C. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if such assistance could adversely affect national security or military preparedness. The implementing documents issued by the Secretaries of the Military Departments and the Directors of the Defense Agencies shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

D. APPROVAL AUTHORITY

Requests by civilian law enforcement officials for DoD assistance in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this section.

1. Approval authority for military assistance if there is a civil disturbance or related matters requiring immediate action is governed by DoD Directive 3025.12 (reference (l)).

2. Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46 (reference (u)).

3. The following governs approval for assistance to civilian law enforcement officials in other circumstances:

a. Requests for training, expert advice, or use of personnel to operate or maintain equipment shall be forwarded for consideration under section E. of enclosure 4.

b. Requests for DoD intelligence components to provide assistance shall be forwarded for consideration under DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)).

c. Loans under the Economy Act (reference (i)) are limited to agencies of the Federal Government. Leases under 10 U.S.C. 2667 (reference (d)) may be made to entities outside the Federal Government.

(1) Requests for arms, ammunition, combat vehicles, vessels, and aircraft are subject to approval by the Secretaries of the Military Departments and the Directors of Defense Agencies. A notice of approval or denial shall be reported to the ASD(FM&P) within 48 hours after such action.

(2) Requests for loan or lease or other use of equipment or facilities are subject to approval by the Secretaries of the Military Departments and the Directors of the Defense Agencies, unless approval by a higher official is required by statute or DoD Directive applicable to the particular disposition. This authority may be delegated. The Secretaries of the Military Departments and the Directors of the Defense Agencies shall issue rules for taking action on requests for loan, lease, or other use of equipment or facilities that are not governed by paragraphs D.3.a. through D.3.c., above, subject to the following:

(a) Such rules shall ensure compliance with applicable statutes and DoD Directives requiring specific levels of approval with respect to particular dispositions.

(b) The ASD(FM&P) shall be notified within 48 hours after action is taken approving or denying a request for a loan, lease, or other use of equipment or facilities for more than 60 days.

d. Requests for the use of equipment or facilities outside the Continental United States (CONUS) other than arms, ammunition, combat vehicles, vessels, and aircraft shall be approved in accordance with procedures established by the applicable Military Department or Defense Agency.

e. Requests from Federal agencies for purchase of equipment (permanent retention) that are accompanied by appropriate funding documents may be submitted directly to the Military Departments or Defense Agencies. Requests for transferring equipment to non-Federal agencies must be processed under DoD Instruction 4160.23 (reference (m)) or DoD Directive 4165.20 (reference (p)).

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f. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(FM&P). Requests will be forwarded and processed according to the urgency of the situation.

E. FUNDING

Funding requirements for assistance under this enclosure shall be established under the guidance in enclosure 5.

RESTRICTIONS ON PARTICIPATION OF DoD
PERSONNEL IN CIVILIAN LAW ENFORCEMENT ACTIVITIES

A. STATUTORY REQUIREMENTS

1. Posse Comitatus Act. The primary restriction on military participation in civilian law enforcement activities is the Posse Comitatus Act (reference (v)), which provides:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both."

2. Permissible direct assistance. The following activities are not restricted by reference (v).

a. Actions that are taken for the primary purpose of furthering a military or foreign affairs function of the United States, regardless of incidental benefits to civilian authorities. This provision must be used with caution, and 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 reference (v). Actions under this provision may include the following, 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 (UCMJ) (reference (d)).

(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 Directive 5525.7 (reference (w)) with respect to matters in which the Departments of Defense and Justice both have an interest.

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

(4) Protection of classified military information or equipment.

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

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

b. Audits and investigations conducted by, under the direction of, or at the request of IG, DoD, 5 U.S.C., Appendix 3, §8(g) (reference (x)), subject to applicable limitations on direct participation in law enforcement activities.

c. Actions that are taken under the inherent right of the U.S. Government, a sovereign national entity under the U.S. Constitution, to ensure the preservation of public order and to carry out governmental operations within its territorial limits, or otherwise in accordance with applicable law, by force, if necessary. This authority is reserved for unusual circumstances, and will be used only under DoD Directive 3025.12 (reference (1)), which permits use of this power in two circumstances:

(1) The emergency authority authorizes prompt and vigorous Federal action, including use of military forces, to prevent loss of life or wanton destruction of property and to restore governmental functioning and public order when sudden and unexpected civil disturbances, disaster, or calamities seriously endanger life and property and disrupt normal governmental functions to such an extent that duly constituted local authorities are unable to control the situation.

(2) Protection of Federal property and functions authorizes Federal action, including the use of military forces, to protect Federal property and Federal Government functions when the need for protection exists and duly constituted local authorities are unable or decline to provide adequate protection.

d. Actions taken pursuant to DoD responsibilities under 10 U.S.C. §§331-334 (reference (d)), relating to the use of the military forces with respect to insurgency or domestic violence or conspiracy that hinders the execution of State or Federal law in specified circumstances. Actions under this authority are governed by DoD Directive 3025.12 (reference (1)).

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

(1) Protection of national parks and certain other Federal lands. See 16 U.S.C. §§23, 78, and 593 (reference (y)).

(2) Enforcement of the Fishery Conservation and Management Act of 1976. See 16 U.S.C. §1861(a) (reference (y)).

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

(4) Assistance in the case of crimes against members of Congress. See 18 U.S.C. §351 (reference (z)).

(5) Assistance in the case of crimes involving nuclear materials. See 18 U.S.C. §831 (reference (z)).

(6) Protection of the President, Vice President, and other designated dignitaries. See 18 U.S.C. §1751 and the Presidential Protection Assistance Act of 1976 (reference (z)).

(7) Actions taken in support of the neutrality laws. See 22 U.S.C. §§408 and 461-462 (reference (aa)).

(8) Removal of persons unlawfully present on Indian lands. See 25 U.S.C. §180 (reference (bb)).

(9) Execution of quarantine and certain health laws. See 42 U.S.C. §97 (reference (cc)).

(10) Execution of certain warrants relating to enforcement of specified civil rights laws. See 42 U.S.C. §1989 (reference (cc)).

(11) Removal of unlawful inclosures from public lands. See 43 U.S.C. §1065 (reference (dd)).

(12) Protection of the rights of a discoverer of a guano island. See 48 U.S.C. §1418 (reference (ee)).

(13) Support of territorial governors if a civil disorder occurs. See 48 U.S.C. §§1422 and 1591 (reference (ee)).

(14) Actions in support of certain customs laws. See 50 U.S.C. §220 (reference (ff)).

3. Restrictions on Direct Assistance. Except as otherwise provided in this enclosure, the prohibition on the use of military personnel "as a posse comitatus or otherwise to execute the laws" prohibits the following forms of direct assistance:

- a. Interdiction of a vehicle, vessel, aircraft, or other similar activity.
- b. A search or seizure.
- c. An arrest, apprehension, stop and frisk, or similar activity.
- d. Use of military personnel for surveillance or pursuit of individuals, or as undercover agents, informants, investigators, or interrogators.

4. Training

a. The Military Departments and Defense Agencies may provide training to Federal, State, and local civilian law enforcement officials. Such assistance may include training in the operation and maintenance of equipment made available under section A. of enclosure 3. This does not permit large scale or elaborate training, and does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

b. Training of Federal, State, and local civilian law enforcement officials shall be provided under the following guidance:

(1) This 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 national security or military preparedness concerns.

(2) Such assistance may not involve DoD personnel in a direct role in a law enforcement operation, except as otherwise authorized by law.

(3) Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

5. Expert Advice. Military Departments and Defense Agencies may provide expert advice to Federal, State, or local law enforcement officials in accordance with 10 U.S.C. §§371-378 (reference (d)). This does not permit regular or direct involvement of military personnel in activities that are fundamentally civilian law enforcement operations, except as otherwise authorized in this enclosure.

6. 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 training of non-DoD personnel would be unfeasible or impractical from a cost or time perspective and would not otherwise compromise national security or military preparedness concerns.

a. In general, the head of the civilian law enforcement agency may request a Military Department or Defense Agency to provide DoD personnel to operate or maintain or assist in operating or maintaining equipment for the civilian agency. This assistance shall be subject to the following guidance:

(1) Such assistance may not involve DoD personnel in a direct role in a law enforcement operation (see subsection A.3., above), except as provided in paragraph A.6.c., below, or as otherwise authorized by law.

(2) Except as otherwise authorized by law, the performance of such assistance by DoD personnel shall be at a location where there is not a reasonable likelihood of a law enforcement confrontation.

(3) The use of military aircraft to provide point-to-point transportation and training flights for civilian law enforcement officials may be provided only in accordance with DoD 4515.13-R (reference (h)).

b. Additional provisions concerning drug, customs, immigration, and certain other laws: a request under this provision for DoD personnel to operate or maintain or to assist in operating or maintaining equipment made available under section A. of enclosure 3 may be made by the head of a civilian agency empowered to enforce the following laws:

(1) The Controlled Substances Act (reference (gg)) or the Controlled Substances Import and Export Act (reference (hh)).

(2) Any of Sections 274 through 278 of the Immigration and Nationality Act (reference (ii)).

(3) A law relating to the arrival or departure of merchandise, as defined in Section 1401 of the Tariff Act of 1930 (reference (jj)), into or out of the Customs territory of the United States, as defined in the Tariff Schedules of the United States, (reference (jj)) or any other territory or possession of the United States; or

(4) Any other law that establishes authority for DoD personnel to provide direct assistance to civilian law enforcement officials. In addition to the assistance authorized under this paragraph, the following assistance may be provided:

(a) DoD personnel may be assigned to operate or assist in operating equipment to the extent the equipment is used for monitoring and communicating to civilian law enforcement officials the movement of air and sea traffic with respect to any criminal violation of the laws specified in paragraph A.2.e., above. This includes communicating information concerning the relative position of civilian law enforcement officials and other air and sea traffic.

(b) In an emergency circumstance, equipment operated by or with the assistance of DoD personnel may be used outside the land area of the United States (or any Commonwealth, territory, or possession of the United States) as a base of operations by Federal law enforcement officials to facilitate the enforcement of a law in subparagraph A.2.c.(1), above, and to transport such law enforcement officials in connection with such operations, subject to the following limitations:

1 Equipment operated by or with the assistance of DoD personnel may not be used to interdict or interrupt the passage of vessels or aircraft, except when DoD personnel are otherwise authorized to take such action with respect to a civilian law enforcement operation.

2 There must be a joint determination by the Secretary of Defense and the Attorney General that an emergency circumstance exists under 10 U.S.C. §374(c)(2) (reference (d)). An emergency circumstance may be determined to exist for purposes of this subparagraph only when the size and scope of the suspected criminal activity in a given situation poses a serious threat to the interests of the United States; and enforcement of laws in paragraph A.2.e., above, would be impaired seriously if the assistance described in this subparagraph were not provided.

(c) The emergency authority in this subparagraph may be used only with respect to large scale criminal activity at a particular point in time or over a fixed period. It does not permit use of this authority on a routine or extended basis.

(d) Nothing in this subparagraph restricts the authority of military personnel to take immediate action to save life or property or to protect a Federal function as provided in paragraph A.2.b., above.

(3) When DoD personnel are otherwise assigned to provide assistance with respect to the laws specified in paragraph A.2.e., above, the participation of such personnel shall be consistent with the limitations in such laws, if any, and such restrictions as may be established by the Secretary of Defense, the ASD(FM&P), or the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned.

7. Other Permissible Assistance. The following forms of indirect assistance are not restricted by the Posse Comitatus Act (reference (d)) (see enclosure 3):

a. Transfer of information acquired in the normal course of military operations. See enclosure 2.

b. Such other actions, approved in accordance with procedures established by the Secretaries of the Military Departments and the directors of the Defense Agencies concerned, that do not subject civilians to use military power that is regulatory, proscriptive, or compulsory.

B. EXCEPTIONS BASED ON STATUS

The restrictions in section A., above, do not apply to the following persons:

1. A member of a Reserve component when not on active duty, active duty for training, or inactive duty for training.
2. A member of the National Guard when not in the Federal Service.
3. A civilian employee of the Department of Defense. If the civilian employee is under the direct command and control of a military officer, assistance will not be provided unless it would be permitted under section C., below.
4. A member of a Military Service when off duty, and in a private capacity. A member is not acting in a private capacity when assistance to law enforcement officials is rendered under the direction or control of DoD authorities.

C. EXCEPTIONS BASED ON MILITARY SERVICE

DoD guidance on the Posse Comitatus Act (reference (v)), as stated in enclosure 3, is applicable to the Department of the Navy and the Marine Corps as a matter of DoD policy, with such exceptions as may be provided by the Secretary of the Navy on a case-by-case basis.

1. Such exceptions shall include requests from the Attorney General for assistance under 21 U.S.C. §873(b) (reference (kk)).
2. Prior approval from the Secretary of Defense shall be obtained for exceptions that are likely to involve participation by members of the Navy or Marine Corps in an interdiction of a vessel or aircraft, a law enforcement search or seizure, an arrest, apprehension, or other activity that is likely to subject civilians to use military power that is regulatory, proscriptive, or compulsory. Such approval may be granted only when the head of the civilian agency concerned 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 impaired seriously if the assistance were not provided because civilian assets are not available to perform the missions; 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.

D. MILITARY PREPAREDNESS

Assistance may not be provided under this enclosure if such assistance could adversely affect national security or military preparedness. The implementing documents issued by the Secretaries of the Military Departments and the Directors of the Defense Agencies shall ensure that approval for the disposition of equipment is vested in officials who can assess the impact of such disposition on national security and military preparedness.

E. APPROVAL AUTHORITY

Requests by civilian law enforcement officials for use of DoD personnel in civilian law enforcement functions shall be forwarded to the appropriate approval authority under the guidance in this section.

1. The use of DoD personnel in civil disturbances and related matters is governed by DoD Directive 3025.12 (reference (1)), which includes the approval authorities.

2. Approval authority for assistance to the government of the District of Columbia is governed by DoD Directive 5030.46 (reference (u)).

3. The following governs approval for assistance to civilian law enforcement officials in other circumstances.

a. The Secretary of Defense is the approval authority for requests that involve assignment of 50 or more DoD personnel or a period of assignment of more than 30 days.

b. The Secretaries of the Military Departments and Directors of Defense Agencies may approve the following types of assistance, except as provided in E.3.a., above:

(1) Use of DoD personnel to provide training or expert advice in accordance with subsections A.4. and A.5., above.

(2) Use of DoD personnel for equipment maintenance in accordance with subparagraph A.6.b.(1), above.

(3) Use of DoD personnel to monitor and communicate the movement of air and sea traffic in accordance with subparagraph A.6.b.(1), above.

c. The ASD(FM&P) is the approval authority for other requests for assignment of personnel. This authority may be delegated to the Secretaries of the Military Departments and the Directors of the Defense Agencies with respect to specific categories of assistance.

d. Requests that involve DoD intelligence components are subject to the limitations in DoD Directive 5240.1 (reference (b)) and DoD 5240.1-R (reference (f)), and are subject to approval by the Secretary of Defense.

e. The views of JCS shall be obtained on all requests that are considered by the Secretary of Defense or the ASD(FM&P) or that otherwise involve personnel assigned to a Unified or Specified Command.

f. The view of the ASD(RA) shall be obtained on all requests that are to be considered by the Secretary of Defense or the ASD(FM&P) that involve Reserve component personnel or equipment.

g. All requests, including those in which subordinate authorities recommend denial, shall be submitted promptly to the approving authority using the format and channels established by the ASD(FM&P). Requests will be forwarded and processed according to priority.

F. FUNDING

Funding requirements for assistance under this enclosure shall be established by the ASD(FM&P) under the guidance in enclosure 5.

FUNDING

A. ESTABLISHMENT OF GUIDANCE

Funding requirements and related reporting procedures shall be established by the ASD(FM&P), after consultation with the Assistant Secretary of Defense (Comptroller) (ASD(C)), subject to the guidance of this enclosure.

B. PROCEDURAL REQUIREMENTS

1. As a general matter, reimbursement is required when equipment or services are provided to agencies outside the Department of Defense. The primary sources of law for reimbursement requirements are the Economy Act (reference (i)) for Federal agencies and the Leasing Statute, 10 U.S.C. §2667 (reference (d)). Other statutes may apply to particular types of assistance. (See section A. of enclosure 3.)

2. If reimbursement is not required by law for a particular form of assistance, the authority to waive reimbursement is delegated to the ASD(FM&P). The ASD(FM&P) may delegate to the Secretaries of the Military Departments and the Directors of the Defense Agencies (or designees) the authority to waive reimbursement on matters within their approval authority. See 10 U.S.C. §377 (reference (d)). The dollar value of a waiver shall be determined in accordance with Chapter 26 of DoD 7220.9-M (reference (11)). A request for waiver may be granted if reimbursement is not otherwise required by law and:

a. Is provided as an incidental aspect of the activity that is conducted for military purposes.

b. Involves the use of DoD personnel in an activity that provides DoD training operational benefits that are substantially equivalent to the benefit of DoD training or operations.

3. The Secretary of the Military Department or the Director of the Defense Agency (or his or her designees) may request the views of the Joint Chiefs of Staff when acting on a request for waiver of reimbursement when such waiver may adversely affect military preparedness.

4. In evaluating requests for waiver of reimbursement, consideration shall be given to the budgetary resources available to civilian law enforcement agencies.

C. MILITARY PREPAREDNESS

Reimbursement may not be waived if deletion of such funds from a DoD account could adversely affect the national security or military preparedness of the United States.

Sample Format for Preparing, "Report on Support
to Civilian Law Enforcement (RCS DD-FM&P(Q) 1595)"

The quarterly report shall contain the following information for each request considered:

1. Number and type of assistance requested.
 - a. Facilities.
 - b. Information.
 - c. Equipment.
 - (1) Aircraft
 - (2) Vehicles
 - (3) Vessels
 - (4) Special (night vision goggles, weapons, etc.)
 - (5) Miscellaneous
 - d. Aviation Mission Support.
 - (1) Surveillance
 - (2) Identification aircraft support
 - (3) Logistics
 - (4) Miscellaneous
 - e. Surface Mission Support.
 - (1) Surveillance
 - (2) Ship services (towing, tactical law enforcement teams TACLETs, etc.)
 - (3) Logistics
 - (4) Miscellaneous
 - f. Ground-based Mission Support.
 - (1) Radar/Sensor Surveillance
 - (2) Aerostats
 - (3) Transportation of law enforcement personnel

- (4) Border air and ground surveillance
- (5) Logistics
- (6) Miscellaneous
- g. Explosive Ordnance Disposal.
- h. Training provided to law enforcement agencies.
- i. Personnel.
- j. Other support not specifically addressed.
- 2. The length of time for which assistance is requested, if appropriate (if the request is for information or support for a brief time, enter "NA").
- 3. Status of the requests:
 - a. Number approved.
 - b. Number denied.
 - c. Number pending.
- 4. A brief discussion of the reason for any denial.
- 5. Manhours/mandays expended to support law enforcement agencies.

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AVIATION ASSISTANCE TO LAW ENFORCEMENT AGENCIES

(Sample Format)

Surveillance

Aircraft	Region State	Sorties	Flight Hours	Detections Gained	Passed to LEA's	Remarks
E-2C	Pacific	18	76	10A	9	No CS support available
E-2C	Atlantic	23	88	13A	10	CHET successful intercept of one acft. Flown by Reserves.
P-3C	Atlantic	103	712	32S	28S	CG seized 3 vessels.

Identification

Aircraft	Region State	Sorties	Flight Hours	Visual/IRDS Attempts	Detections Successful	Remarks
OV-10	New Mexico	17	35	3A	1	Handover to USCS, 1200# Marijuana seized.

Logistics/Miscellaneous Support

Aircraft	Region State	Sorties	Flights Hours	Remarks
UH-1N	Bahamas	332	299	Bahamas police seized 12,200# marijuana, 2000# cocaine.
RF-4C	Texas	4	7	Reconnaissance of remote airfields

Abbreviation Key:

A - Airborne	SS - Secret Service
Acft- Aircraft	Res - Reserve
S - Surface	ANG - Air Nat'l Guard
L - Land	ARNG - Army Nat'l Guard
CS - U.S. Customs Service	LEA - Law Enforcement Agency
CG - U.S. Coast Guard	CHET - Customs High Endurance Tracker (aircraft)
D - DEA	IRDS - Infrared Detection System

Attachment - 1

1. Aid for Completing Aviation Assistance Portion of Quarterly Report 7-1.

AID FOR COMPLETING AVIATION ASSISTANCE PORTION OF QUARTERLY REPORT

Aviation assistance is the largest area of DoD support to law enforcement agencies. This section is used to report to DoD the Services' aviation assistance. The following is an aid to complete this section.

- | | |
|-------------------|--|
| Acft | - "Aircraft," if flown by other than active duty units, indicate in the "Remarks" column (e.g., Res, ANG, ARNG). |
| Region State | - Where sorties were flown. (e.g., Pacific, Caribbean, GA, TX, Bahamas, etc.). |
| Sorties | - Number of flights flown by the platform aircraft during the quarter. |
| Flt Hrs. | - Number of flight hours flown by the aircraft during the quarter. |
| Detections Gained | - Number of "raw data" detections against suspect air or surface vessels. |
| Detections | - The number of detections passed to law enforcement agency for possible investigation. |
| Remarks | - Used for comments to specify sorties flown by Reserve, ARG, ARNG units; amplify support contributing to known law enforcement success or failure, etc. |
| Visual/IRDS | - Applies to visual or infrared detection to identify suspect vessel. |
| Identification | - Aircraft (e.g., OV-10, OV-1) used to identify suspect aircraft prior to handover to the U.S. Customs Service tracker/interceptor aircraft. |

AD (FintH)
100-51217

DEPARTMENT OF DEFENSE DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
5525.5, Ch 1	December 20, 1989	5000 series

ATTACHMENTS

Pages 3 through 5

INSTRUCTIONS FOR RECIPIENTS

The following page changes to DoD Directive 5525.5, "DoD Cooperation with Civilian Law Enforcement Officials," January 15, 1986, are authorized:

PAGE CHANGES

Remove: Pages 3&4

Insert: Attached replacement pages and new page 5

Changes appear on page 4 and are indicated by marginal asterisks.

EFFECTIVE DATE

The above changes are effective immediately.


JAMES L. ELMER
Director
Correspondence and Directives

Attachments: 3 pages

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

4. The Secretaries of the Military Departments and the Directors of the Defense Agencies, as appropriate, shall:

a. Disseminate the guidance issued by the ASD(FM&P) under paragraph E.1.d., above.

b. Review training and operational programs to determine how and where assistance can best be provided civilian law enforcement officials consistent with the policy in section D., above. This review should identify those programs under which reimbursement would not be required under enclosure 5.

c. Issue implementing documents incorporating the guidelines and procedures of this Directive, including the following:

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

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

(3) Guidelines for evaluating requests for assistance in terms of impact on national security and military preparedness.

d. Inform the Joint Chiefs of Staff (JCS), through ASD(FM&P) of all requests for and taskings in support of civilian law enforcement that involve the resources of a Unified or Specified Command, which, if provided, could have significant impact on military preparedness or national security.

5. The Director, National Security Agency/Chief, Central Security Service (DIRNSA/CHCSS) shall establish appropriate guidance for the National Security Agency/Central Security Service (NSA/CSS).

6. The Joint Chiefs of Staff shall:

a. Assist the ASD(FM&P) in the development of guidance for use by approving authorities in evaluating the impact of requests for assistance on national security and military preparedness.

b. Provide advice on the impact on national security and military preparedness of any request for military assistance at the request of the Secretary of Defense, the ASD(FM&P), the Secretaries of the Military Departments, the Directors of Defense Agencies, or the Commanders of the Unified and Specified Commands.

F. INFORMATION REQUIREMENTS

A quarterly report of all requests for assistance (approved, denied, or pending) shall be submitted by the Secretaries of the Military Departments and the Directors of Defense Agencies to the ASD(FM&P), the General Counsel, the ASD(HA), and the ASD(RA), not later than 30 days after the end of each

quarter. The report will show action taken (approval, denial, or pending) and other appropriate information. This information requirement has been assigned Report Control Symbol DD-FM&P(Q)1595. Actions involving the use of classified information or techniques may be exempted from such report with the concurrence of the ASD(FM&P) if it is impractical to prepare an unclassified summary. The sample format at enclosure will be used to record all aviation assistance.

G. RELEASE OF INFORMATION

1. Release of information to the public concerning law enforcement operations is the primary responsibility of the civilian agency that is performing the law enforcement function. The Military Departments and the Directors of the Defense Agencies may release such information, however, when approved under the procedures established by the Secretaries of the Military Departments and the Directors of the Defense Agencies concerned. To the extent possible, the affected civilian law enforcement agencies shall be consulted before releasing such information.

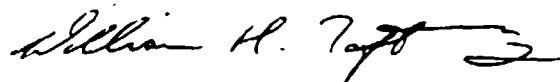
2. When assistance is provided under this Directive, such assistance may be conditioned upon control by the Secretaries of the Military Departments and Directors of the Defense Agencies before information is released to the public.

H. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Assistant Secretary of Defense (Force Management and Personnel) within 120 days.

I. MISCELLANEOUS

The provisions of paragraph A.3. of enclosure 4 of Department of Defense Directive 5525.5, entitled "Restrictions on Direct Assistance," will continue to apply to all actions conducted by military personnel within the territorial boundaries of the United States. With regard to military actions conducted outside the territorial jurisdiction of the United States, however, the Secretary of Defense or the Deputy Secretary of Defense will consider for approval, on a case by case basis, requests for exceptions to the policy restrictions against direct assistance by military personnel to execute the laws. Such requests for exceptions to policy outside the territorial jurisdiction of the United States should be made only when there are compelling and extraordinary circumstances to justify them.



William H. Taft, IV
Deputy Secretary of Defense

December 20, 1989
5525.5

Enclosures - 7

1. References
2. Use of Information Collected During Military Operations
3. Use of Military Equipment and Facilities
4. Restrictions on Participation of DoD Personnel
in Civilian Law Enforcement Activities
5. Funding
6. Sample Format for Preparing, "Report on Support to
Civilian Law Enforcement (RCS DD-FM&P(Q)1595)"
7. Aviation Assistance to Law Enforcement Agencies (Sample
Format)

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