



LAW ENFORCEMENT SUPPORT TO MILITARY INSTALLATIONS

OVERVIEW AND BACKGROUND

The concept of state and local law enforcement providing public safety and security support to military installations is well recognized in the Commonwealth of Virginia. The Virginia Military Advisory Council has a stated goal of “increased security through defense community and military installation interoperability.”¹

Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), the Federal Emergency Management Agency (FEMA) is delegated presidential authority to issue mission assignments to federal agencies to provide assistance to the states in anticipation of, or in response to, a presidential declaration of an emergency or major disaster.² FEMA does not have authority under the Stafford Act to issue mission assignments to state or local agencies.³ However, in the event of a Stafford Act emergency or disaster in a state requiring additional resources to support security as an element of force protection operations in and around Department of Defense (DOD) installations (including one caused by a US adversary, like in the Blue Book Project scenario), a state, working with DOD, can pursue other avenues, individually or in tandem, to acquire local, state, and federal law enforcement resources.*

JURISDICTION

Understanding when and where state and local law enforcement may operate on federal property in general and military installations in particular is a complex question. There are four types of jurisdiction governing law enforcement and the protection of federal property, including military installations. They are (1) property that falls within the exclusive jurisdiction of the Federal Government, (2) property that falls within the concurrent jurisdiction of a state and the Federal Government, whereby each maintains full jurisdiction and any conflict is resolved under the Constitution’s Supremacy Clause or other applicable constitutional provision, (3) property where the state and Federal Government each has partial jurisdiction, whereby each cedes some jurisdiction to the other and where any conflict in overlapping jurisdiction is again resolved pursuant to the Constitution’s Supremacy Clause or other applicable constitutional provision, and (4) property where the Federal Government has only proprietary jurisdiction, i.e., acts solely as a tenant, but where general federal statutes, such as espionage, tax evasion, still apply.⁴

Determining the type of jurisdiction applicable to any military installation requires a case-by-case analysis and more than one type of jurisdiction may exist on a single military facility.⁵ For example, on the west side of Marine Corps Base Quantico (MCBQ), Virginia and the Federal Government exercise concurrent law enforcement jurisdiction.⁶ However, the main side of the base is under exclusive federal jurisdiction.⁷ In cases where there is only federal jurisdiction, and where federal law is either silent or resources are lacking

* The resources presented are not intended as an exhaustive list, and any listed resource should be investigated further before any definitive conclusion is reached concerning its lawful availability.



for a variety of scenarios, i.e., juvenile justice, the Federal Government may retrocede exclusive federal jurisdiction in favor of concurrent jurisdiction with the host state where that state has laws and resources in place for those scenarios.⁸ Another example is where the National Guard, in state status or under Title 32, (discussed in more detail below) is operating or maintaining a federally-owned installation as part of a formal use agreement. Under this circumstance the National Guard is granted concurrent jurisdiction by the DOD to enforce state or local law on federal military installations.⁹

To further implement concurrent jurisdiction, especially in cases where local law enforcement support is needed on-base, MCBQ and a growing number of other installations are engaging in mutual assistance agreements (MAAs) that allow the military installation to call upon the state or locality for law enforcement, fire service, and emergency medical support by granting them concurrent jurisdiction.¹⁰ MAAs not only help address jurisdiction questions, they also set out clear procedures for when and how state and local law enforcement will operate in and around military installations under various circumstances. MCBQ law enforcement and emergency services entities currently have MAAs in place with their counterparts in Prince William, Stafford, and Fauquier counties.¹¹ Langley Air Force Base near Hampton, Virginia executed an MAA with the Hampton Police Department following a 2013 incident outside the base involving an armed assailant.¹²

NATIONAL DEFENSE AUTHORIZATION ACT

The National Defense Authorization Act (NDAA) of 2016 authorized DOD to seek out civilian law enforcement support through a grant of jurisdiction for on-base activities, including for security, and to reimburse those agencies for the cost of that support.¹³ Consistent with the NDAA requirements, under DOD guidance, "installation commanders must coordinate with local first responder organizations, including law enforcement and fire and medical response organizations, to develop procedures for facilitating access during emergency response events."¹⁴ The NDAA also provides that DOD may enter into MAAs with civilian law enforcement agencies, i.e., local, state, federal, and tribal, for off-base security and enforcement of federal, state, local, and tribal law, but reimbursement authority by DOD is not granted under the statute for those activities.¹⁵

PUBLIC ASSISTANCE, CATEGORY B: EMERGENCY PROTECTIVE MEASURES

FEMA's Public Assistance (PA) Program provides grant funding to state, tribal, territorial, and local governments and designates private nonprofits to pay for certain response and recovery activities including emergency protective measures, debris removal, and the restoration of certain disaster-damaged facilities. Most PA Program funding is provided at a 75 percent federal cost share, although during COVID-19, the federal government often picked up 100 percent of certain costs (the cost share determination is entirely discretionary).¹⁶ An emergency protective measure under Category B includes one of the following:

- Eliminate or lessen immediate threats to lives, public health, or safety.
- Eliminate or lessen immediate threats of significant additional damage to improved public or private property in a cost-effective manner.¹⁷

Under Category B of the PA Program, FEMA may fund security and law enforcement operations supporting DOD installations using local and state (in and out of state, see the EMAC section below) law enforcement as part of a larger effort to provide security in the affected state during a covered emergency or disaster.¹⁸



In-state law enforcement would include those from the jurisdictions where the installations are located and law enforcement deployed through in-state mutual aid.¹⁹ However, in a scenario with catastrophic statewide effects, the state's ability to acquire long-term in-state mutual aid may be limited. In all such cases, DOD installations presumably would be one of many types of locations that would be covered for additional security. Regardless, FEMA could not require state and local law enforcement to protect DOD installations directly.²⁰

To prioritize protecting DOD sites, FEMA could coordinate with and fund in-state law enforcement by offering to pay for security operations only at DOD installations while denying PA Program coverage to other protection operations. However, this strategy would raise the issue of whether the federal government is improperly going outside the scope of the PA Program to assist states and using the program as a backdoor to directly benefit federal agencies. This issue could be raised in any instance of the PA Program being used to protect federal installations. It would also raise questions of whether such an approach amounts to unconstitutional "coercion" by the federal government against the affected state.²¹

EMERGENCY MANAGEMENT ASSISTANCE COMPACT

The Emergency Management Assistance Compact (EMAC), which is ratified by Congress and law in all 50 states, allows states to send personnel, equipment, and commodities to assist with response and recovery efforts in affected states when that state's governor declares a state of emergency or disaster.²² EMAC essentially provides access to additional capabilities when state resources are exhausted. For example, EMAC members can send state and local law enforcement officers from one state to another to provide security and law enforcement support, including at military installations. Using EMAC could also allow, but not require, an affected state to seek federal reimbursement at a 75 percent cost share, or in some cases, reimbursement for all the operational costs of outside resources under the PA Program for a Stafford Act disaster or emergency. These costs could include payroll (regular time, overtime, workers' comp., etc.) for deployed personnel (i.e., state or local law enforcement officers).^{23,24} However, pre-deployment, post-deployment, training, and exercise costs are generally not eligible for reimbursement under the PA Program.

NATIONAL RESPONSE FRAMEWORK, EMERGENCY SUPPORT FUNCTION 13

The National Response Network's Emergency Support Function 13 (ESF 13), led by the Department of Justice (DOJ), could be used to deploy federal law enforcement personnel to provide security and law enforcement support around military installations following an emergency or disaster. Under ESF 13, federal law enforcement officers (FLEOs) can be deployed to enforce existing or expanded federal authority or state law.²⁵

ESF 13 is managed by the Bureau of Alcohol, Tobacco, Firearms, and Explosives. ESF integrates federal public safety and security capabilities that can be deployed to support federal agencies, states, and localities, among others, before, during, and after an incident, including those covered by the Stafford Act. For example, ESF 13 could be used for missions to protect "critical infrastructure" such as military and other vital installations. For Stafford Act incidents, ESF 13 support is obtained by states through the FEMA mission assignment process.



FLEOs performing ESF 13 missions to enforce state or local law must have express state statutory authority, including arrest authority, to enforce those laws. If such statutory authority is absent and state executive authority, such as an order from the governor, is relied upon instead, then DOJ must grant concurrence. Even without state authority, FLEOs deployed under ESF 13 are considered to be performing their federal duties and are entitled to all appropriate federal privileges and immunities.²⁶

EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE ACT

The Emergency Federal Law Enforcement Assistance Program (EFLAP) could likely be used to cover state and local law enforcement costs associated with protecting critical infrastructure, including military installations, following certain emergencies or disasters. EFLAP authorizes the attorney general to grant funding to help alleviate costs incurred by state and local law enforcement agencies while responding to extraordinary emergency law enforcement challenges that may overwhelm them. For example, the Virginia Department of Criminal Justice Services received \$500,000 in fiscal year 2019 to reimburse costs incurred by law enforcement following the mass shooting at the Virginia Beach public works building. EFLAP is administered by the DOJ Office of Justice Programs, Bureau of Justice Assistance.

HOMELAND SECURITY GRANT PROGRAM

During a governor-declared state of emergency, states may use FEMA-administered funds from the Homeland Security Grant Program (HSGP) to pay for operational overtime costs to protect critical infrastructure or other high-risk locations.²⁷ Except in cases involving an elevated National Terrorism Advisory Alert, states must first seek prior written approval from FEMA before using HSGP funds.²⁸

STATE, NATIONAL GUARD, AND ACTIVE DUTY FORCES

Finally, military installations affected by a Stafford Act disaster or emergency could be defended or protected by either the Virginia Defense Force (VDF), National Guard forces, or active duty or reserve forces operating in a variety of statuses. As military resources, these forces would have the broadest leeway to act and coordinate with military installations. In fact, the VDF's mission pursuant to state law is to "secure any federal and state property left in place in the event of the mobilization of the Virginia National Guard."^{29,30}

Although guard and active duty forces may be pulled to support direct military operations overseas under the Blue Book Project scenario, state governors using the National Guard to protect critical infrastructure during the period of heightened security and threat concerns following 9/11 was not uncommon, even during the height of the wars in Iraq and Afghanistan.³¹ Guard and active duty troops were also used to address natural disasters around that time, including Hurricane Katrina.³² The VDF, on the other hand, operates solely as a state asset under command of the governor and cannot be "federalized."³³

For the guard and active duty forces, three categories of duty status and varying rules apply to domestic military operations: Title 10 status, National Guard forces serving in Title 32 status, and National Guard forces serving in state active duty or response status.³⁴ National Guard forces in either state active duty or



Title 32 status remain under command of the governor, but under Title 32, the federal government orders and pays for their deployment.³⁵ State and Title 32 status allows the National Guard, subject to authorization from the governor, to provide security and support to civilian law enforcement agencies and direct law enforcement operations.^{36,37} The VDF may also support and perform direct law enforcement functions with the governor’s approval.³⁸ Under Title 10 status, no military forces may act in a direct law enforcement capacity,³⁹ but they can provide “protection” for military personnel and equipment, among other delineated activities.⁴⁰ Exceptions to the ban on direct law enforcement actions by federal military forces are largely governed by the Insurrection Act⁴¹ and related DOD directives.⁴²

CONCLUSION

The need for law enforcement and security support around military installations across a state affected by a Stafford Act emergency or disaster can be met through a variety of sources and mechanisms. The more serious the emergency or disaster, both in terms of scale and duration, the more likely it is that an affected state would need to pull from some or all of these resources. Given the complexities involved, states should develop plans, policies, and procedures for acquiring such resources before actually needing them.

¹ Jennifer Schultz, *Mission Ready: State Policy Options to Sustain Military Installations*, National Conference of State Legislatures, May 2023, p. 2, <https://www.ncsl.org/military-and-veterans-affairs/mission-ready-state-policy-options-to-sustain-military-installations>.

² FEMA, *FEMA Policy: Mission Assignments*, #104-010-3, https://www.fema.gov/sites/default/files/documents/fema_policy-104-010-3_mission-assignments_2024.pdf.

³ FEMA, *Public Assistance Program and Policy Guide Version 5 DRAFT*, June 2024, pp. 77–78, https://www.fema.gov/sites/default/files/documents/fema_public-assistance-program-and-policy-guide_v5_june2024.pdf. See also *Direct Federal Assistance*, Title 44, Code of Federal Regulations, Sec 206.208(c)(1).

When the effect of an incident is so severe that the affected state cannot perform or contract eligible emergency protective measures, the state may request that the federal government provide the needed assistance directly (i.e., direct federal assistance (DFA)). Under DFA, FEMA issues a mission assignment to task the work to another federal agency. The same cost-share provisions that apply to a presidential declaration apply to DFA.

⁴ The Judge Advocate General’s School, *The Military Commander and the Law 2023*, p.115-117. https://www.afjag.af.mil/Portals/77/documents/Publications/MCL23WEB_r.pdf. See also, Department of Justice, *Criminal Resource Manual*, CRM 1500-1999, 1630. Protection Of Government Property -- Real Property -- 18 U.S.C. 7. <https://www.justice.gov/archives/jm/criminal-resource-manual-1630-protection-government-property-real-property-18-usc-7>

⁵ See, *United States v. Apel*, 571 U.S. 359 (2014). There is significant variation in the ownership status of U. S. military sites around the world. Some are owned in fee, others are leased. Some are routinely open to the public, others are open for specific occasions or purposes, and no public access whatsoever is permitted on others.

⁶ Unites States Marine Corps News, MCB Quantico Partners with Local Jurisdictions for Emergency Response Support, March 17, 2016, Adele Uphaus-Conner, Marine Corps Base Quantico <https://www.quantico.marines.mil/News/Article/696157/mcb-quantico-partners-with-local-jurisdictions-for-emergency-response-support/>

⁷ Ibid.

⁸ Department of Defense, Defense-State Liaison Office, *Best Practices, Concurrent Jurisdiction for Juvenile Offenses on Military Installations* <https://download.militaryonesource.mil/StatePolicy/pdfs/2022/bestpractices-concurrentjurisdiction.pdf>

⁹ Interview with Virginia State Coordinator of Emergency Management



- ¹⁰ Marines TV, *Marine Corps Base Quantico and Prince William County Conduct a Full Scale Exercise Simulating a Train Crash and Chemical Leak*, May 2023. <https://www.marines.mil/News/Marines-TV/video/887669/dvpTag/exercise/>
- ¹¹ United States Marine Corps News, MCB Quantico Partners with Local Jurisdictions for Emergency Response Support, March 17, 2016, Adele Uphaus-Conner, Marine Corps Base Quantico <https://www.quantico.marines.mil/News/Article/696157/mcb-quantico-partners-with-local-jurisdictions-for-emergency-response-support/>
- ¹² Margaret Brunner. Police Executive Research Forum. 2016. *Policing Issues in Garrison Communities*, p 8. Emerging Issues Series. Washington, DC: Office of Community Oriented Policing Services
- ¹³ Public Law 114–92, 10 U.S.C. §2672(g). Protection of buildings, grounds, property, and persons. <https://www.congress.gov/114/plaws/publ92/PLAW-114publ92.pdf>
- ¹⁴ DOD Manual 5200.08 Volume 3, Physical Security Program: Access To DoD Installations, September 18, 2020, p.13. https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/520008_vol3.pdf?ver=2020-09-18-130526-407
- ¹⁵ Public Law 114–92, 10 U.S.C. §2672(h).
- ¹⁶ FEMA Advisory, Subject: FEMA COVID-19 Cost Share Extension, Mar. 1, 2022, https://www.fema.gov/sites/default/files/documents/fema_covid-19-cost-share-extension_03012022.pdf.
- ¹⁷ FEMA, *Public Assistance Program and Policy Guide Version 4*, June 2020, p. 110, https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf; FEMA, *Public Assistance Program and Policy Guide Version 5 DRAFT*, p.103. See also *Direct Federal Assistance*, Title 44, Code of Federal Regulations, Sec 206.225(a)(3).
- ¹⁸ FEMA, *Public Assistance Program and Policy Guide Version 4*, p. 110.
- ¹⁹ See *Mutual Aid Agreements Among Governing Bodies of Localities*, Title 15.2, Code of Virginia, Sec 15.2-1736, <https://law.lis.virginia.gov/vacode/title15.2/chapter17/section15.2-1736/>; *Police and Other Officers May Be Sent Beyond Territorial Limits*, Title 15.2, Code of Virginia, Sec 15.2-1724, <https://law.lis.virginia.gov/vacodefull/title15.2/chapter17/article2/#:~:text=%C2%A7%2015.2%2D1724,by%20roads%20outside%20the%20jurisdiction>; Virginia Department of Criminal Justice Services, *Supplemental Emergency Assistance For Local Law Enforcement Agencies*, <https://www.dcjs.virginia.gov/sites/dcjs.virginia.gov/files/publications/law-enforcement/supplemental-emergency-assistance-local-law-enforcement-agencies.pdf>.
- ²⁰ Any attempt to force state and local law enforcement would be tantamount to commandeering state officials in violation of the 10th Amendment. Even aggressive use of federal funding to entice behavior can reach a point of unconstitutional “coercion.” See “Amdt10.4.2 Anti-Commandeering Doctrine,” Constitution Annotated, https://constitution.congress.gov/browse/essay/amdt10-4-2/ALDE_00013627/#:~:text=Amdt10.4.2%20Anti%20Commandeering%20Doctrine,respectively%2C%20or%20to%20the%20people.
- ²¹ The distinction between permissible enticement and impermissible coercion rests in large part on whether the state has no choice in whether to accept the federal conditions. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519 (Supreme Court of the United States 2012), <https://case.law/caselaw/?reporter=us&volume=567&case=0519-01>.
- ²² *Emergency Management Assistance Compact*, Public Law 104–32 (Oct. 19, 1996), <https://www.congress.gov/104/plaws/publ321/PLAW-104publ321.pdf>.
- ²³ EMAC, *Guide to Eligible Expenses and Source Documentation*, Feb. 2024, p. 3, <https://mil.wa.gov/asset/64cbfa4334aea/EMAC%20Guide%20to%20Eligible%20Expenses%20and%20Source%20Documentation%20June%202023.pdf>.
- ²⁴ EMAC, *EMAC FAQs for Auditors, Finance and Budget Officers, and Contractors*, Feb. 2024, p. 4.
- ²⁵ FEMA, *Emergency Support Function #13 – Public Safety and Security Annex*, June 2016, p. 2, https://www.fema.gov/sites/default/files/2020-07/fema_ESF_13_Public-Safety-Security.pdf.
- ²⁶ FEMA, *Emergency Support Function #13 – Public Safety and Security Annex*, p. 3.
- ²⁷ FEMA, *U.S. Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2024 Homeland Security Grant Program*, Apr. 6, 2024, pp. 87–89, <https://www.fema.gov/grants/preparedness/homeland-security/fy-24-nofo>.
- ²⁸ FEMA, *U.S. Department of Homeland Security Notice of Funding Opportunity Fiscal Year 2024 Homeland Security Grant Program*, p. 90.



²⁹ *Organizations; Definitions*, Title 44, Code of Virginia, Sec. 44-54.4,

<https://law.lis.virginia.gov/vacode/title44/chapter1/section44-54.4/#:~:text=Organization%3B%20definitions,the%20Department%20of%20Military%20Affairs>.

³⁰ *Arms, Equipment, and Facilities*, Title 44, Code of Virginia, Sec. 44-54.12,

<https://law.lis.virginia.gov/vacode/title44/chapter1/section44-54.12/>. To be armed while securing such installations would require the VDF to have specific authorization from the governor.

³¹ See John Jordan, "Pataki Calls for National Guard Troops at State's Nuclear Plants," *GlobeSt*, Oct. 14, 2001,

<https://www.globest.com/2001/10/14/pataki-calls-for-national-guard-troops-at-states-nuclear-plants/?slreturn=20241003161309>; <https://www.nytimes.com/2005/07/08/nyregion/in-added-security-measure-officers-are-riding-the-rails.html>.

³² See Committee on Homeland Security and Governmental Affairs, *Hurricane Katrina: A Nation Still Unprepared*, United States Senate, 2006, <https://www.congress.gov/109/crpt/srpt322/CRPT-109srpt322.pdf>.

³³ Under *Virginia Defense Force*, Title 44, Code of Virginia, Sec 44-54.4, the VDF or its components cannot be called into federal military service. However, individual members of the VDF can be called into such service.

³⁴ *Virginia Defense Force*.

³⁵ Michael G. Anderson, "Implications from the Guard's Extensive Use: A Cautionary Tale of 2020," *Journal of Advanced Military Studies* 13, no. 1 (2022), pp. 129–143, <https://www.usmcu.edu/Outreach/Marine-Corps-University-Press/MCU-Journal/JAMS-vol-13-no-1/Implications-from-the-Guards-Extensive-Use/>.

³⁶ Congressional Research Service, *The President's Authority to Use the National Guard or the Armed Forces to Secure the Border*, June 15, 2023, p. 2, <https://crsreports.congress.gov/product/pdf/LSB/LSB10121>. Under Title 32, section 502(f), National Guard members may perform "homeland defense" missions that include activities "undertaken for the military protection of the territory or domestic population of the United States, or of infrastructure or other assets of the United States determined by the Secretary of Defense as being critical to national security, from a threat or aggression against the United States."

³⁷ Morgan Thomas, "Military 101: Orders," *The Council of State Governments*, Sept. 25, 2024,

<https://www.csg.org/2024/09/25/military-101-orders/>.

³⁸ *Militia State Active Duty*, Title 44, Code of Virginia, Sec 44-75.1, <https://law.lis.virginia.gov/vacode/44-75.1/>.

³⁹ Acting in a direct law enforcement capacity is barred by the Posse Comitatus Act and includes search, seizure, arrest, apprehension, stop and frisk, surveillance, pursuit, interrogation, investigation, evidence collection, certain security functions, traffic or crowd control, or similar activities. See Title 18, United States Code, Sect 1385 and Department of Defense Instruction (DODI) 3025.21, *Defense Support of Civilian Law Enforcement Agencies*.

⁴⁰ Joint Publication 3-28, Oct. 29, 2018, revision of JP 3-28 dated July 31, 2013, *Defense Support of Civil Authorities*, pp. iii–2, https://www.jcs.mil/portals/36/documents/doctrine/pubs/jp3_28.pdf.

⁴¹ *Insurrection*, Title 10, United States Code, Chapter 13, Sec 251-255,

<https://uscode.house.gov/view.xhtml?path=/prelim@title10/subtitleA/part1/chapter13&edition=prelim>.

⁴² Department of Defense Directive 3025.18, Dec. 29, 2010, Incorporating Change 2, Mar. 19, 2018, *Defense Support of Civil Authorities*, p. 6, <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodd/302518p.pdf?ver=2019-02-05-090338-707>.