

Defense Primer: Defense Support of Civil Authorities

Introduction

Throughout its history, the U.S. military has assisted federal, state, and local authorities in responding to homeland security incidents when the response requirements exceeded those authorities' resources. Such assistance is called *Defense Support of Civil Authorities* (DSCA). Situations where the Department of Defense (DOD) has provided DSCA include

- Border security,
- Civil disturbances,
- Natural disasters (e.g., fires, hurricanes),
- Public health emergencies (e.g., COVID-19 response),
- Oil spills, and
- Special events, (e.g., presidential inaugurations).

Common tasks for military personnel performing DSCA include transporting supplies, clearing or constructing roads, controlling traffic, and conducting surveillance.

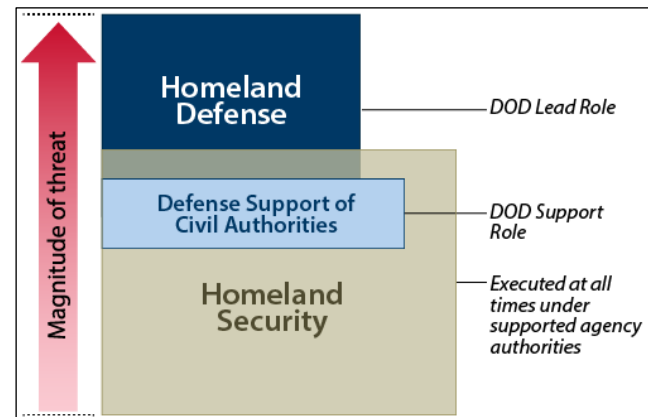
DOD's Role in Homeland Security Activities

DOD is the primary agency for *homeland defense* (HD) activities, defined in law as “activity 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.” DOD is typically a supporting agency for *homeland security* (HS) activities, of which DSCA is a subset (see **Figure 1**). DOD's role depends on the magnitude of the threat. According to DOD, “The characterization of a particular threat [as HD or HS], and the designated response agencies and modes, ultimately rests with the President.” (Joint Publication 3-27, 2018)

DOD policy is for HS incidents be managed at the lowest level possible, be that at the state, local, territorial, or tribal level. When an incident exceeds, or is anticipated to exceed, the resources of these entities, the U.S. government may provide resources and capabilities to support the response, including predicting, assessing, preparing for, and recovering from domestic incidents.

The U.S. military does not have units specifically dedicated to DSCA. Rather, DOD derives DSCA capabilities from its warfighting capabilities and provides them to civil authorities on a reimbursable basis. Further, DOD components are not specifically funded to train, equip, and exercise for DSCA operations. Still, DOD policy and actions indicate that the department proactively participates in planning for homeland security incidents and incorporates DSCA in exercises and training. (DOD Directive (DODD) 3025.18, 2018).

Figure 1. Relationship between Homeland Defense, Homeland Security, and DSCA



Source: Derived from DOD, JP 3-27, 2018, Fig. A-1, p. A-2.

Relevant Statutory Authorities

The coordination of national preparedness activities, including DOD's role in these efforts, is set forth in national planning frameworks and implemented by relevant agencies. Laws guiding DOD's activities include

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121-5207, “Stafford Act”) is the statutory authority for relief from domestic natural disasters and some human-caused incidents. It authorizes the President to declare an incident a “major disaster” or an “emergency” and authorizes certain types of federal assistance to state, local, tribal, and territorial governments.

The Economy in Government Act (31 U.S.C. §1535, “Economy Act”) provides authority for federal agencies to order goods or services from other federal agencies provided the “ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.” This act permits an agency to request DOD support in situations other than those outlined in the Stafford Act.

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

The Posse Comitatus Act (18 U.S.C. §1385) prohibits “any part of the Army, the Navy, the Marine Corps, the Air Force, or the Space Force” from being involved in civilian law enforcement except when expressly authorized by the Constitution or Congress. Courts have generally construed this act to prohibit activities such as search, seizure, and arrest.

Evaluation of Requests for Assistance (RFAs)

There are two distinct methods to initiate DSCA: a *request for assistance* (RFA) from civil authorities or direct authorization by the President or Secretary of Defense (DODD 3025.18). DOD policy requires RFAs to be evaluated based on six criteria:

- **Legality:** compliance with laws,
- **Lethality:** potential for use of lethal force by or against DOD forces,
- **Risk:** safety of DOD forces,
- **Cost:** including the source of funding and the effect on the DOD budget,
- **Appropriateness:** whether providing the requested support is in the interest and within the capability of DOD, and
- **Readiness:** impact on DOD's ability to perform its primary mission.

If the request is granted, DOD is to coordinate with the lead agency and other response partners to determine the nature and extent of support.

Immediate Response Authority (IRA)

In urgent circumstances, it may not be possible to secure a timely RFA approval through normal channels. In this case, military commanders and certain DOD civilians have the authority to immediately respond to RFAs “to save lives, prevent human suffering, or mitigate great property damage within the United States” (DODD 3025.18). One example of IRA use is the Army Reserve's effort to clear trees and debris resulting from Hurricane Helene in October 2024. Per DOD policy, the official directing the response must immediately notify the National Joint Operations and Intelligence Center, through the chain of command, of the details of the response and must reassess the situation within 72 hours after receiving the request to determine if continued DOD support, using this authority, is necessary.

Command and Control of Armed Forces and National Guard

Both active-duty and National Guard (NG) forces can perform DSCA operations. However, while active-duty forces are under command and control of the President, NG forces (except the Washington, D.C. NG) remain under command and control of their state or territorial governor unless called into federal service. When both active duty and NG personnel are used in response to an incident, DOD may appoint a commissioned officer as a *dual-status commander* with the consent of the governor. This dual-status commander receives and issues orders from the federal chain of command to federal military forces and from the state chain of command to NG forces.

Reimbursable and Nonreimbursable Activities

Congress does not directly authorize or appropriate funds to DOD for DSCA. Reimbursement of DOD's costs for providing DSCA varies according to the requirements contained in the statutory authorities invoked. For example, if the Federal Emergency Management Agency (FEMA) receives DOD assistance following a Stafford Act declaration, FEMA is to reimburse DOD for associated costs. DOD considers reimbursable costs to include those

associated with cost of overtime, travel and transportation of supplies and equipment, consumables, fuel, and damage of supplies and equipment. Nonreimbursable activities may include normal training and operating costs (e.g., regular personnel pay and allowances, benefits, and administrative overhead.) The Secretary of Defense may waive the requirement for reimbursement under 10 U.S.C. §277(c) under some circumstances.

Rules for Use of Force

The Standing Rules for the Use of Force (SRUF), as outlined in CJCSI 3121.01B, govern the conduct of DOD personnel when supporting civil authorities. Military personnel and commanders are generally authorized to use the minimum necessary force only as a last resort to counter a threat. Use of force should be reasonable in intensity, duration, and magnitude. Non-lethal force is authorized to control a situation, accomplish the mission, or to provide self-defense to individuals and protected property. Lethal force is to be used only when all lesser means have failed and are otherwise are justified by circumstances outlined in the SRUF. Rules of force for personnel under state or federal agency control may differ from DOD's SRUF; however, servicemembers activated under Title 10, United States Code are to comply with DOD SRUF.

Considerations for Congress

Adequacy of Previous DOD Preparation Efforts: DOD Inspector General Audit 2019-086 determined that “DoD's support and resources are critical to supplement state, local, territory, and tribal response efforts.” The IG “did not evaluate, and cannot state, whether or to what extent DoD's preparedness measures will enhance its disaster response.” In the aftermath of Hurricanes Helene and Milton, Congress may choose to review DOD's role and performance in the overall federal response to these natural disasters.

Potential Impact on Readiness: Some Members of Congress have expressed concern about the extent to which DSCA efforts might affect readiness by diverting forces from training for and performing their primary missions. Some military leaders have defended these deployments and highlighted a training benefit provided by some DSCA operations. It could be an area for continued oversight due to enduring demands for certain missions, such as border security and natural disasters.

Oversight and Appropriations: DOD can waive reimbursement for DSCA activities if such support “(1) is provided in the normal course of military training or operations; or (2) results in a benefit... that is substantially equivalent to that which would otherwise be obtained from military operations or training” (10 U.S.C. §277(c)). As DSCA is not a budget line item, nonreimbursed efforts could take funds away from other DOD spending priorities. Congress may consider further oversight of the waiver authority including the budgetary implications of nonreimbursed DSCA funds for other DOD activities.

Kristy N. Kamarck, Specialist in Military Personnel
Hannah D. Dennis, Analyst in U.S. Defense Policy
Nicholas M. Munves, Analyst in U.S. Defense Policy

Disclaimer

This document was prepared by the Congressional Research Service (CRS). CRS serves as nonpartisan shared staff to congressional committees and Members of Congress. It operates solely at the behest of and under the direction of Congress. Information in a CRS Report should not be relied upon for purposes other than public understanding of information that has been provided by CRS to Members of Congress in connection with CRS's institutional role. CRS Reports, as a work of the United States Government, are not subject to copyright protection in the United States. Any CRS Report may be reproduced and distributed in its entirety without permission from CRS. However, as a CRS Report may include copyrighted images or material from a third party, you may need to obtain the permission of the copyright holder if you wish to copy or otherwise use copyrighted material.