

and territories, or any political subdivision thereof. The term civil disturbance includes all domestic conditions requiring the use of Federal armed forces pursuant to the provisions of chapter 15 of Title 10, United States Code.

(b) *Federal property* is that property which is owned, leased, possessed, or occupied by the Federal Government.

(c) *Military resources* include military and civilian personnel, facilities, equipment, and supplies under the control of a DoD component.

(d) A *Federal function* is any function, operation, or action carried out under the laws of the United States by any department, agency, or instrumentality of the United States or by an officer or employee thereof.

§215.4 Legal considerations.

(a) Under the Constitution and laws of the United States, the protection of life and property and the maintenance of public order are primarily the responsibilities of State and local governments, which have the necessary authority to enforce the laws. The Federal Government may assume this responsibility and this authority only in certain limited instances.

(b) Aside from the constitutional limitations of the power of the Federal Government at the local level, there are additional legal limits upon the use of military forces within the United States. The most important of these from a civil disturbance standpoint is the Posse Comitatus Act (18 U.S.C. 1385), which prohibits the use of any part of the Army or the Air Force to execute or enforce the laws, except as authorized by the Constitution or Act of Congress.

(c) The Constitution and Acts of Congress establish six exceptions, generally applicable within the entire territory of the United States, to which the Posse Comitatus Act prohibition does not apply.

(1) The constitutional exceptions are two in number and are based upon the inherent legal right of the U.S. Government—a sovereign national entity under the Federal Constitution—to insure the preservation of public order and the carrying out of governmental

operations within its territorial limits, by force if necessary.

(i) *The emergency authority.* Authorities 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, disasters, 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 situations.

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

(2) There are four exceptions to the Posse Comitatus Act based on Acts of Congress.

(i) In the cases of each of the first three of those described, paragraphs (c)(2)(i) (a), (b), and (c) of this section, personal Presidential action, including the issuance of a proclamation calling upon insurgents to disperse and retire peaceably within a limited time, is a prerequisite.

(a) *10 U.S.C. 331.* Authorizes use of the militia and Armed Forces when a State is unable to control domestic violence, and a request for Federal assistance has been made by the State legislature or governor to the President. Implements Article IV, section 4, of the Constitution.

(b) *10 U.S.C. 332.* Authorizes use of the militia and Armed Forces to enforce Federal law when unlawful obstructions or rebellion against the authority of the United States renders ordinary enforcement means unworkable. Implements Article II, section 3, of the Constitution.

(c) *10 U.S.C. 333.* Authorizes use of the militia and Armed Forces when domestic violence or conspiracy hinders execution of State or Federal law, and a State cannot or will not protect the constitutional rights of the citizens. Implements Article II, section 3, and the 14th Amendment of the Constitution.

§215.5

32 CFR Ch. I (7–1–12 Edition)

(d) *House Joint Resolution 1292, June 6, 1968.*¹ Directs all departments of the Government, upon the request of the Secret Service, to assist that Service in carrying out its statutory duties to protect Government officials and major political candidates from physical harm. Assistance to the Secret Service is governed by DoD Directive 3025.13, “Employment of Department of Defense Resources in Support of the United States Secret Service,” July 15, 1968.²

(ii) It should be noted that none of the above authorities, in and of itself, provides sufficient legal basis to order members of the Reserve components to active Federal service.

§215.5 Policies.

(a) The employment of DoD military resources for assistance to civil authorities in controlling civil disturbances will normally be predicated upon the issuance of a Presidential Executive order or Presidential directive authorizing and directing the Secretary of Defense to provide for the restoration of law and order in a specific State or locality. Exceptions to this condition will be limited to:

(1) Cases of sudden and unexpected emergencies as described in §215.4(c)(1)(i), which require that immediate military action be taken.

(2) Providing military resources to civil authorities as prescribed in §215.9 of this part.

(b) The Attorney General of the United States has been designated to receive and coordinate preliminary requests from States for Federal military assistance authorized by 10 U.S.C. 331 (§215.4(c)(2)(i)(a)). Formal requests from States for such aid will be made to the President, who will determine what Federal action will be taken.

(c) The Secretary of the Army is delegated any and all of the authority of the President under chapter 15 of title 10, U.S.C. (§215.4(c)(2)(i) (a), (b), and (c))

which has been or may be hereafter delegated by the President to the Secretary of Defense.

(d) The Secretary of the Navy and the Secretary of the Air Force are delegated all that authority which has been or may be hereafter delegated by the President to the Secretary of Defense to order to active duty, units and members of the Reserve Components under their respective jurisdictions, except National Guard units and members, for use pursuant to chapter 15 of title 10, U.S.C. (§215.4(c)(2)(i) (a), (b), and (c)).

(e) DoD components and their subordinate activities will coordinate with local civil authorities or local military commanders as appropriate, to assure mutual understanding of the policies and procedures to be adhered to in an actual or anticipated civil disturbance situation.

(f) DoD civilian employees generally should not be used to assist civil authorities in connection with civil disturbances, except as provided for in §215.9(b)(3).

(g) The repositioning of more than a battalion-sized unit, as authorized in §215.6(a)(6), will be undertaken only with the approval of the President. Requests for the repositioning of forces will be addressed to the Attorney General.

§215.6 Responsibilities.

(a) The Secretary of the Army is designated as the Executive Agent for the Department of Defense in all matters pertaining to the planning for, and the deployment and employment of military resources in the event of civil disturbances. As DoD Executive Agent, the Secretary of the Army (or the Under Secretary of the Army, as his designee) is responsible for:

(1) Providing policy and direction concerning plans, procedures, and requirements to all DoD components having cognizance over military resources which may be employed under the provisions of this part.

(2) Improving and evaluating the capabilities of the National Guard to deal with civil disturbances.

(3) Establishing DoD policies and procedures for:

¹Although this resolution has been placed in the Statutes at Large as Public Law 90–331, 82 Stat. 170, it has not been codified; it is set out in the notes to 18 U.S.C. 3056.

²Filed as part of original copies available from U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120, Code: 300.