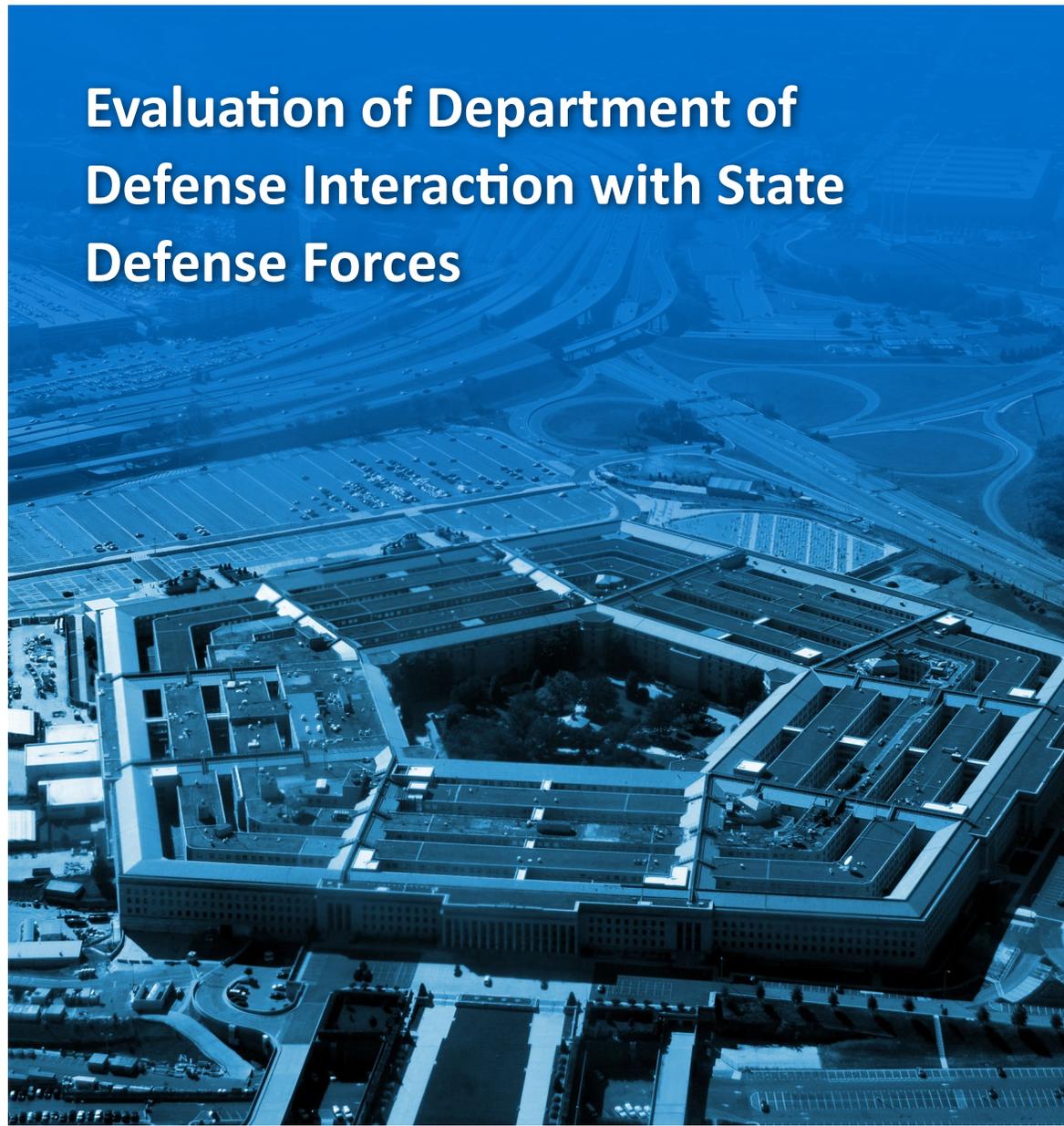




# INSPECTOR GENERAL

*Department of Defense*

APRIL 30, 2014



## Evaluation of Department of Defense Interaction with State Defense Forces

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

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# Executive Summary

## *Evaluation of Department of Defense Interaction with State Defense Forces*

April 30, 2014

### Who Should Read This Report

Representatives from the Under Secretary of Defense for Policy, Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, Chief, National Guard Bureau, and Commander, United States Northern Command should read this report.

### What We Recommend

- A. The Under Secretary of Defense for Policy, in coordination with the Office of General Counsel, clarify the position of the Department and characterize the level of coordination and interaction between the DoD Components and State Defense Forces permissible by statute.
- B. Chief, National Guard Bureau, modify National Guard Bureau Regulation 10-4, "Organization and Functions: National Guard Interaction with State Defense Forces," to state that State Defense Forces be considered as any other State agency with respect to State Defense Forces preparation for and participation in Federal responses, and the related use of Federal equipment, excepting the specific restrictions of section 109(d), title 32, United States Code.

### Synopsis

Provisions for states to maintain State Defense Forces (SDF) are outlined in section 109, title 32, United States Code (32 U.S.C. § 109 [2013]). They are probably the least well-known military element operating in the U.S. Initially established by Congress in the early 20<sup>th</sup> century<sup>1</sup> and authorized in their current form in 1955,<sup>2</sup> there were active SDF in 22 states and Puerto Rico, as of March 2014. These forces had an estimated aggregate membership of about 14,000<sup>3</sup> and performed missions ranging from ceremonial guards during state events to assisting first-responders during state emergencies.

The purpose of this assessment was to review the effectiveness of DoD interaction with SDF. We found that the status of SDF varied among the states choosing to establish them, and the interaction between DoD and the 23 SDF was not properly defined. Improved DoD/SDF cooperation and interaction was impeded by two critical aspects.

Improper and overly restrictive implementation of the statute establishing SDF nearly prohibited DoD interaction with or support of those forces.<sup>4</sup> A correct interpretation of the language differentiates voluntary, state-maintained "other troops" from the dual-function National Guard.

<sup>1</sup> Public Law 64-85, Section 61(b), "The National Defense Act of 1916."

<sup>2</sup> Public Law 84-364, "To Authorize the States to Organize and Maintain Stated Defense Forces, and for Other Purposes, 1955."

<sup>3</sup> Data as of 2005 in "Why More States Should Establish State Defense Forces," The Heritage Foundation, February 28, 2012 <http://www.heritage.org/research/reports/2012/02/why-more-states-should-establish-state-defense-forces>.

<sup>4</sup> Section 109(d), title 32, United States Code (32 U.S.C. § 109 [2013]), pg. 2, states that, "A member of a defense force...is not...entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States."

Accordingly, as state organizations, SDF would not be eligible for Federal benefits, such as pensions and access to the Federal military healthcare system. However, this prohibition did not prohibit DoD from sharing with SDF any equipment or other resources acquired with Federal funds providing it furthers DoD missions.

The Office of the Secretary of Defense and DoD agencies lacked policy outlining the sharing and loaning of DoD equipment or other guidance governing DoD interaction with SDF. The only current policies directly addressing SDF was National Guard Regulation 10-4, "Organization and Functions: National Guard Interactions with State Defense Forces," November 2, 2011, applicable only to the National Guard, and Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia," February 3, 2005, Rapid Action Revision (RAR), issue date May 11, 2012. Recent changes to policy controlling combined disaster response of DoD, the National Guard, and other state actors did not include discussion of SDF.

## Recommendations, Management Comments, and Our Response

### ***Recommendation A***

Under Secretary of Defense for Policy, in coordination with the Department of Defense Office of General Counsel, clarify the position of the Department with regard to what efforts are legally permissible for coordination and interaction between DoD organizations and State Defense Forces, and if permitted, characterize the nature of the coordination and interaction.

#### *Office of the Under Secretary of Defense for Policy*

The Under Secretary of Defense for Policy non-concurred with our recommendation, stating that "a consistent definition of the permissible use of DoD resources for SDFs is prescribed in 31 U.S.C. §1301(a), which provides: 'Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.'"

#### *Our Response*

We considered the management comments partially responsive. The intent of our recommendation was to alleviate observed inconsistency in the interpretation and application of the language contained in section 109(d), title 32, United States Code. U.S. States that chose to create SDF gave them a variety of missions leading to unique interactions with DoD Components, primarily the National Guard.

While we still think that the Office of the Under Secretary of Defense for Policy should clarify and communicate to State Adjutants General the mechanism by which they can obtain a consistent interpretation of the permissible use of Federal resources by SDF, we accept management's analysis of the risk associated with their proposed course of action.

## ***Recommendation B***

Chief, National Guard Bureau, modify National Guard Bureau Regulation 10-4, “Organization and Functions: National Guard Interaction with State Defense Forces,” to establish that State Defense Forces be considered as any other State agency with respect to State Defense Forces preparation for and participation in Federal responses, and the related use of Federal equipment, excepting the specific restrictions of section 109(d), title 32, United States Code.

### *Office of the Under Secretary of Defense for Policy*

The Under Secretary of Defense for Policy non-concurred with our original recommendation to develop and publish guidance for DoD Components governing interactions with SDF. Management stated that SDF were “treated like other State government entities that DoD may interact with, and there are provisions in force that address DoD Components’ interactions with State entities, citing DoD Directive 1100.20, “Support and Services for Eligible Organizations and Activities Outside the Department of Defense,” as an example.

### *Our Response*

The comments from the Under Secretary of Defense for Policy were partially responsive. We met with the Deputy Under Secretary of Defense for Homeland Defense Strategy and Force Planning, who asserted that additional DoD policy was not necessary. However, management agreed that, while SDF were unique in several ways, interaction with DoD Components should be at least on-par with other State agencies. In response, we have modified and redirected the recommendation to the Chief, National Guard Bureau, recommending that the Bureau change the regulation governing National Guard/SDF interaction to state that SDF be considered as any other State entity, excepting those specific restrictions stated in section 109(d), title 32, United States Code.

## ***Recommendations Table***

<b>Office of Primary Responsibility</b>	<b>Recommendations Requiring Comment</b>	<b>No Additional Comments Required</b>
Under Secretary of Defense for Policy		A
Chief, National Guard Bureau		B



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
4800 MARK CENTER DRIVE  
ALEXANDRIA, VIRGINIA 22350-1500**

April 30, 2014

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR POLICY  
CHIEF, NATIONAL GUARD BUREAU

SUBJECT: Evaluation of Department of Defense Interaction with State Defense Forces  
(Report No. DODIG-2014-065)

The Deputy Inspector General, Special Plans and Operations, is providing this report for your information and use. We considered management comments on a draft of this report when preparing the final report.

We appreciate the courtesies extended to our staff. Please direct questions to Mr. George Marquardt at (703) 604-9159, [george.marquardt@dodig.mil](mailto:george.marquardt@dodig.mil) or Mr. Gregory D. Sampson, (703) 604-9104, [gregory.sampson@dodig.mil](mailto:gregory.sampson@dodig.mil).

A handwritten signature in blue ink, reading "K.P. Moorefield", is positioned above the printed name.

Kenneth P. Moorefield  
Deputy Inspector General  
Special Plans and Operations

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Senate Subcommittee on Defense, Committee on Appropriations

House Committee on Armed Services

House Committee on Oversight and Government Reform

House Subcommittee on Defense, Committee on Appropriations

*\* Indicates recipient of the Draft Report.*

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## Introduction

State Defense Forces (SDF) are one modern-day manifestation of the historical concept of the “citizen soldier,” an idea constant throughout U.S. history. Initially established by Congress in the early 20<sup>th</sup> century<sup>5</sup> and authorized in their current form in 1955,<sup>6</sup> they are the least well-known element of the military establishments of the states. Although the authorizing statute for SDF appears in the United States Code in title 32, “National Guard” (32 U.S.C. [2011]) SDF is distinct from the National Guard in that individuals are prohibited from serving in both organizations at the same time.<sup>7</sup> See Appendix A for a brief history of SDF.

## Background

As of March 2014, chief executives of 22 states and Puerto Rico chose to form SDF. The 23 active SDF had an estimated aggregate membership of 14,000<sup>8</sup> and performed missions ranging from ceremonial guards during state events to assisting first-responders during state emergencies.

Figure 1. Locations of Active SDF as of March 2014.



Source: DoD IG-SPO

<sup>5</sup> Public Law 64–85, Section 61(b), “The National Defense Act of 1916.”

<sup>6</sup> Public Law 84–364, “To Authorize the States to Organize and Maintain Stated Defense Forces, and for Other Purposes, 1955.”

<sup>7</sup> Section 109(e), title 32, United States Code (32 U.S.C. 109§ [1956]), “Maintenance of other Troops.”

<sup>8</sup> Data as of 2005 in “Why More States Should Establish State Defense Forces,” The Heritage Foundation, February 28, 2012 <http://www.heritage.org/research/reports/2012/02/why-more-states-should-establish-state-defense-forces>.

The U.S. Constitution establishes the Armed Forces and the militia. Title 10, United States Code (10 U.S.C. [2012]), defines the eligibility, classes, and mission of the militia of the several states, but does not address SDF. Title 32, United States Code, describes the “organized militia,” now known as the National Guard, and, as stated earlier, authorizes states to establish defense forces.

### ***Constitutional Authority***

Article I, section 8 of the U.S. Constitution endorses the existence and potential value of armies, the Navy, and the militia, and establishes basic roles for Federal and state governments with respect to their administration and operation. However, Article I, section 10 of the U.S. Constitution prohibits states from maintaining State Guards in times of peace, without the express consent of Congress.<sup>9</sup>

### ***Title 10, United States Code – “Armed Forces”***

The Militia Act of 1903<sup>10</sup> defined the composition and classes of the militia. Current United States Code states:

The Militia consists of all able-bodied males of at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

Section 311, title 10, United States Code (10 U.S.C. § 311 [1956]) also established two classes of the militia: the “organized militia,” consisting of the National Guard and the Naval militia; and the “unorganized militia,” consisting of “members of the militia who are not members of [the former].” This distinction differentiates those forces that were uniformed and attended regular drill (mustered) from the remaining eligible persons who were not assigned to an organized militia unit, did not wear uniforms, and did not undergo training.

### ***Title 32, United States Code – “National Guard”***

The version of title 32, United States Code, in force in 2013 (32 U.S.C. [2013]), recognizes the National Guard as the “organized militia.” The historical and revision notes for section 110 state that “the words ‘National Guard’ are substituted

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<sup>9</sup> “No State shall, without the consent of Congress,...keep troops or ships of war in time of peace...”

<sup>10</sup> The Militia Act of 1903 (32 Stat, 775), is codified in section 311, title 10, United States Code (10 U.S.C. 311 [1956]).

for the words ‘the militia provided for in this title.’” Also, section 507 states, “the words ‘National Guard’ are substituted for the words ‘troops of the militia,’ since the source statute historically applied only to the organized militia...”

### ***Legislation Authorizing State Defense Forces***

As noted, contemporary SDF were authorized by Congress in 1955. Congressional intent was to grant the states permissive authority to legally organize a nucleus of volunteers in time of peace for which the Federal Government would bear no obligation for “pensions or disability allowances or medical care.” The sole obligation was to distribute arms and equipment “under such terms as the Department of Defense might prescribe.”<sup>11</sup> DoD and the National Guard Association of the U.S. both strongly endorsed the legislation on record. The representative from the National Guard Association of the U.S. stated that, “it appears foolhardy to wait until a national emergency is upon us and the National Guard is ordered into the Federal service before at least laying the groundwork for a State defense force.”<sup>12</sup> Unlike previous authorizations for State Guard forces that were passed during major conflict, the 1955 legislation provided permanent authority.

As of March 2014, the governing legislation for SDF is section 109, title 32, United States Code (32 U.S.C. §109 [2013]).

#### **Sec. 109. Maintenance of other troops**

- (a) In time of peace, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may maintain no troops other than those of its National Guard and defense forces authorized by subsection (c).
- (b) Nothing in this title limits the right of a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands to use its National Guard or its defense forces authorized by subsection (c) within its borders in time of peace, or prevent it from organizing and maintaining police or constabulary.
- (c) In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may, as provided by its laws, organize

<sup>11</sup> Senator Richard B. Russell, Chairman of the Senate Committee on Armed Services in a hearing on July 28, 1955, reference House Resolution 7289, “Authorizing the States to Organize and Maintain State Defense Forces.”

<sup>12</sup> Prepared statement of Major General Ellard A. Walsh, President, the National Guard Association of the United States, to the Senate Committee on Armed Services, July 28, 1955.

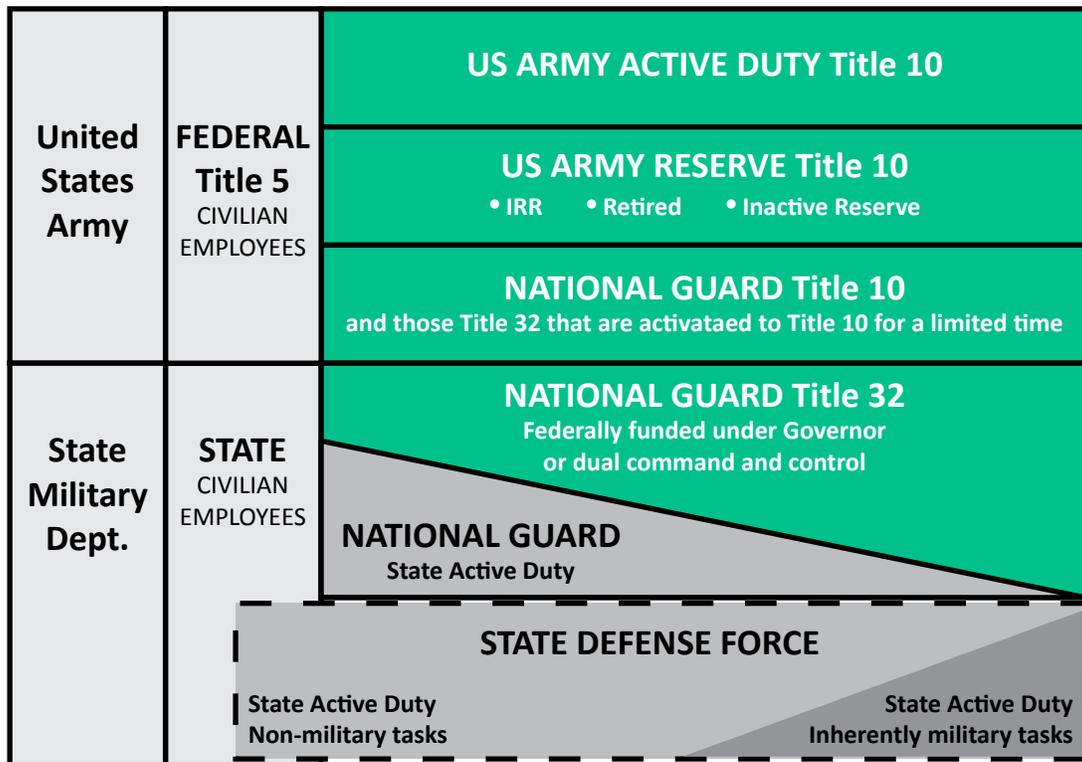
and maintain defense forces. A defense force established under this section may be used within the jurisdiction concerned, as its chief executive (or commanding general in the case of the District of Columbia) considers necessary, but it may not be called, ordered, or drafted into the armed forces.

- (d) A member of a defense force established under subsection (c) is not, because of that membership, exempt from service in the armed forces, nor is he entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.
- (e) A person may not become a member of a defense force established under subsection (c) if he is a member of a reserve component of the armed forces.

### Organization

SDF are elements of the State Military Department of the states and territories in which the Chief Executive has chosen to establish them (see Figure 2).

Figure 2. Universe of Duty Status for Soldiers in the U.S. Military Establishment



Source: DoD IG-SPO



SDF are authorized by Federal law and established under state law. The Governor serves as Commander-in-Chief of all state military forces (National Guard, SDF, and Naval Militia). All state military forces, including SDF, reported to the respective state Adjutant General, who was the senior military officer of the state. States were able to establish age, medical, educational, and other standards for their SDF, and standards varied considerably among the states. Some states reported published, enforced standards, while, in many states, standards were absent altogether. SDF units that employed personnel in professional capacities, such as legal or medical fields, relied on state licensing for accreditation and skill validation.

### ***Missions***

SDF reported performing missions ranging from ceremonial guard to unarmed crowd control at special events to armed force protection of state National Guard assets. Several states assigned SDF more specialized missions in homeland security-related fields including, but not limited to, disaster recovery, shelter operations, and search and rescue. For example, three states reported assigning units of their SDF specialized missions:

- The New York Guard (New York SDF) augmented the decontamination team of the New York National Guard's Chemical, Biological, Radiological, Nuclear, and Explosives Enhanced Response Force Package.

- The California State Military Reserve (California SDF) had a small arms training team devoted to training state National Guard Soldiers in advanced small arm techniques and tactics in preparation for Federal deployment.
- The Texas State Guard (Texas SDF) established a Maritime Regiment that had an agreement with the Department of Homeland Security to train and certify members of the Texas State Guard to augment crews on United States Coast Guard vessels.

The end of the Vietnam War, the conclusion of the Cold War, the attacks on September 11, 2001, and natural disasters such as Hurricane Katrina, all contributed to significant structural changes to the Federal Government, including the creation of the Department of Homeland Security. For DoD in particular, these events, among others, led to the:

- volunteer military,
- rebalancing between active-duty and National Guard forces,
- long-term commitment of forces to operations in Southwest Asia,
- establishment of an Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs and U.S. Northern Command, and
- elevation of the Chief, National Guard Bureau to four-star rank and a position in the Joint Chiefs of Staff.

Federal organizational changes impacted the historical relationship between DoD and SDF. The high level of interagency cooperation and interconnectivity has highlighted the potential benefits of a properly defined relationship between DoD and SDF with regard to crisis response and support to other operations.

Relevant to SDF, the Federal civil and military response to major events and, specifically, the role of the National Guard is very different from when SDF were first authorized. From its origin, the National Guard was trained and resourced as a Federal strategic reserve to the Armed Forces and the primary source for state emergency response. Beginning in the early 1990s, the National Guard and Reserves

have evolved into an essential element of the military's operational forces. National Guard units have met a rigorous mobilization and deployment schedule in support of overseas contingency operations as part of this evolution.

Since 1955, U.S. Senators and Representatives have submitted multiple bills and amendments that would modify the enabling legislation and status of SDF. The most recent submission was "The State Defense Force Improvement Act," included in the draft National Defense Authorization Act of 2010. The Act stated that SDF were impeded by a lack of clarity in Federal regulations and that SDF suffered from a lack of standardization, support, and coordination with the DoD.<sup>13</sup> The Act also sought to recognize SDF as an integral military component of the homeland security effort of the United States. The SDF language was dropped from the National Defense Authorization Act of 2010 during conference deliberations.

As noted below, at least two states introduced relevant legislation attempting to clarify the status of their SDF, although neither ultimately enacted the legislation into state law.

Montana state legislature House Bill No. 278, section 22, "Montana Home Guard Revitalization Act," stated that the purpose of the Montana Home Guard<sup>14</sup> was to "fill the gap between community service organizations, such as a neighborhood watch program and the Montana national guard." This bill would have created infantry and cavalry Home Guard units and authorized them to be armed when necessary.

As of July 27, 2011, Arizona state law authorized the governor to establish a state guard unit, and in January 2012, Arizona Senate Bill 1083 proposed creating the Special Missions Unit, with the intended mission to serve as an state militia on the border with Mexico. Senate Bill 1083 proposed to establish the unit outside the purview and chain of command of the Arizona National Guard, completely segregating the SDF chain of command from DoD. The drafters of the bill believed that establishing the unit as a pure state entity minimized National Guard influence over mission assignments and exempted the unit from Federal call-up.

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<sup>13</sup> State Defense Force Improvement Act, H.R. 206, 111<sup>th</sup> Congress, 1<sup>st</sup> Session.

<sup>14</sup> Montana Home Guard is the name used for their State Defense Force (SDF).

## Objectives

The overall objective of this assessment was to review DoD interaction with SDF. This report specifically addresses:

- relevant legislation and DoD Component policies/regulations governing SDF;
- compliance with existing law, policies, and regulations;
- effectiveness of DoD interaction with SDF; and
- Federal impediments to effective management of the SDF program.

## Scope and Methodology

As a result of our research, we determined that DoD did not manage the SDF program. We therefore excluded from this report the element of our objectives about “Federal impediments to effective management of the SDF.”

For this project, the team examined documents provided by the Offices of the Assistant Secretary of Defense for Homeland Defense and Americas’ Security Affairs, Joint Chiefs of Staff, U.S. Northern Command, Secretary of the Army, National Guard Bureau, and several state National Guard Bureaus and Defense Forces.

We conducted 22 interviews. We met with representatives of the Assistant Secretary of Defense for Homeland Defense and Americas’ Security Affairs, U.S. Northern Command, the National Guard Bureau, and the Assistant Secretary of Defense for Reserve Affairs. We also met with representatives of the State Guard Association of the United States and several senior leaders of SDF to discuss their programs.

The team distributed structured questionnaires to each of the 22 states and one territory (Puerto Rico) with current active SDF. Two versions were sent to each state: one version to the Commanding General of the State Defense Force and the other to The Adjutant General. We received responses from 19 SDF commanders and 18 state Adjutants General and summarized their responses in Appendix B. See Appendix C and D for copies of the questionnaires.

See Appendix E for further discussion of project scope and methodology.

## Observation

The status of SDF varied among the states that chose to establish them, and the interaction between DoD and SDF was not properly defined.

Two critical aspects impeded improved cooperation and interaction between DoD and SDF.

- Organizations were misinterpreting and improperly applying U.S. federal fiscal laws and regulations governing SDF.
- National Guard Bureau policy with regard to SDF was overly restrictive.

As a result, DoD and the National Guard Bureau were potentially preventing state executives from effectively including SDF capabilities and expertise in mission planning and execution, and those states that actively used their SDF received conflicting and confusing guidance. If included in mission planning and execution, use of SDF might effectively further DoD missions.

## Discussion

The status of SDF within the state military structure varied for those states that established SDF. In response to a formal request for information, the State Adjutant Generals and Commanding Generals of the 22 states and one territory that maintain SDF provided information concerning the classification of SDF organizations and personnel. See Appendix B for summarized responses and Appendix C and D for examples of the questionnaires.

Of State Adjutant Generals who responded concerning the legal status of SDF personnel:

- Thirteen stated they designated SDF personnel as Soldiers, citing state law to support the assertion;
- Eight stated their state military department recognized members of the SDF as lawful belligerents, pursuant to Army Field Manual 27-10, "The Law of Land Warfare;" and
- Four stated their SDF were authorized to use weapons to support state missions.

The responses from SDF Commanders underscored the varied status among the states. Respondents from 18 states replied that state law considered their SDF as part of the organized militia.<sup>15</sup> This designation is significant given that, as stated previously, title 32, United States Code, recognizes the National Guard as the “organized militia” in Federal law. A similar number stated that SDF were granted the same legal status as the National Guard and were subject to states codes of military justice, under most circumstances, when in state active-duty status. Most of those recognized their authority to appoint officers of the militia, as provided by article I, section 8, of the Constitution.

The combined responses of State Adjutants General and SDF Commanding Generals shows that almost all of the missions assigned to SDF were non-military in nature. Missions described included support to civilian emergency management, small-scale search and rescue, and other unarmed operations relating to homeland security.

The recognition of unarmed SDF personnel as organized militia, soldiers, and lawful belligerents by several state Adjutants General and SDF Commanding Generals underscores the uncertainty associated with SDF status. The unique status of SDF within the military establishment of states creates additional challenges when SDF interface with Federal entities and complicates their interactions with DoD.

The relationship between DoD and SDF was not properly defined. For example, SDF personnel were often unable to fully participate in state missions when required to work alongside DoD and NGB personnel. Further, one state military department reported regulatory constraints prohibiting the desired use of SDF members with professional skills (legal, medical, investigative) in voluntary support of Federal missions.

As of the date of this report, misinterpretation and misapplication of fiscal law, and the lack of DoD policy and guidance were the primary contributors to the ineffective interaction between DoD and SDF.

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<sup>15</sup> A fact-sheet published by the National Guard Bureau also stated that SDF are “a form of militia and [are] authorized to the states by federal statute. State Defense Forces are not entities of the federal government.” National Guard Bureau Public Affairs Office. “National Guard and Militias,” accessed on February 11, 2011 from [www.ng.mil/media/factsheets](http://www.ng.mil/media/factsheets).

## A. Fiscal Law and Regulations Impacting Use of State Defense Forces

U.S. fiscal law and DoD financial policy and regulations were interpreted to severely restrict the use of DoD property and resources by SDF. While support from the Department of the Army to SDF has varied over time (see Appendix A), misapplication of statutes and other fiscal policy in 2012 nearly prohibited DoD interaction with, or support of, SDF.

### ***Rules Restricting the Use of Federal Funds***

Section 109(d), title 32, United States Code states that, “A member of a defense forces...is not...entitled to pay, allowances, subsistence, transportation, or medical care or treatment, from funds of the United States.” Unnecessary restrictions resulted from organizations improperly determining that the specific limitations on the use of Federal funds enumerated in Section 109(d) prohibit any and all interaction, coordination, or cooperation between SDF and DoD entities.

Expanding the five specific prohibitions enumerated in the law yields an improper conclusion that SDF members were proscribed from any action that could result in the use of Federal funds. This is also contradictory to the original intent of the legislation as described above. The result of this misinterpretation has been a mistaken belief that providing any Federal resource (office supplies, use of equipment, etc.) to an SDF would constitute violation of the Antideficiency Act.<sup>16</sup>

Section 109(d) imposes a narrow prohibition on the use of Federal funds for SDF pay, allowances, subsistence, transportation, or medical care or treatment. Accordingly, SDF would not be eligible for Federal benefits, such as pensions and access to the Federal military healthcare system. However, this does not prohibit DoD from allowing SDF access to Federal equipment or resources which might benefit the execution of DoD training, exercises, or other missions. For example, state-licensed professional SDF members (doctors, lawyers, etc.) would be able to use a federally funded office to assist with the deployment of National Guard troops, providing the member does not receive one of the five listed benefits.

<sup>16</sup> Sections 1341-42 and 1511-19, title 31, United States Code, “The Anti-deficiency Act,” and DoD 7000.14-R, Financial Management Regulation, volume 14, chapter 2, paragraph.020103.A.1, require that any expenditure of appropriated funds must have a specific purpose, approved by appropriate authority, and be obligated during the specific time period that funds are sufficient and available.



Figure 4. A New York Guard (SDF) Soldier Supervises National Guard Soldiers Erecting a Chemical Decontamination Tent. Source: New York Guard

### ***State Defense Forces and the National Guard***

As stated previously, most of the states and territories with a SDF self-limit their missions to emergency response, operations center management, and ceremonial activities directly related to their state or territory. For the remaining, state statutes authorize governors or chief executives to assign SDF inherently military tasks including, “defend, secure, repel, suppress.” In some cases, SDF are expected to assume control of all facilities and equipment of the National Guard in order to fulfill state missions upon partial or full mobilization of the National Guard.

The Army National Guard is based in over 2,600 communities across the U.S. All property purchased by Federal appropriation and issued to the National Guard remains U.S. property<sup>17</sup> and the responsibility of the Federal National Guard United States Property and Fiscal Officer assigned to each of the 54 states and territories.<sup>18</sup> The United States Property and Fiscal Officer has equal responsibility to both the state adjutant general and the Chief, National Guard Bureau, to ensure proper reimbursement by the state for all authorized costs associated with use, repair, and, if necessary, replacement of any Federal equipment or other resource used during state missions.

On November 2, 2011, the Chief, National Guard Bureau re-issued Regulation 10-4, “Organization and Functions: National Guard Interactions with State Defense

<sup>17</sup> Section 710(a), title 32, United States Code.

<sup>18</sup> Section 10503, title 10 and section 708, title 32, United States Code, and National Guard Regulation 130-6 / Air National Guard Instruction 36-2.

Forces.” This updated regulation quotes section 109(d), title 32, United States Code, but then adds the following additional restrictions:

However, a State NG [National Guard] shall not spend federal funds (including pay and allowances) or use federal equipment in activities which have the primary purpose of training or otherwise supporting SDF[s]....Federal resources if shared with SDFs must be done in IAW [in accordance with] guidance from the U.S. Property and Fiscal Officer in the State.<sup>19</sup>

While the National Guard Bureau might not be prohibited from imposing these additional restrictions, they are not required by or based in 32 U.S.C. §109(d). State use of SDF for virtually all missions other than ceremonial duties requires interaction with DoD-purchased equipment or other resources. SDF participation in DoD-funded training, Federal emergency response, or other Federal-funded state missions all involve SDF members’ use of Federal equipment or expenditure of Federal funds. Inaccurate and inconsistent interpretation of section 109(d), title 32, United States Code inhibits effective coordination and support.

### ***Emergency Preparedness/Disaster Response***

State emergency preparedness training and disaster response within a state normally involve activation of an emergency operations center (civilian) and, if participation by the National Guard is required, a joint operations center (military). In states that routinely include the SDF in state active-duty missions, SDF staff is co-located with the National Guard in the military department joint operations center. Federal funding support is routine and, in certain cases, Federal personnel and equipment would be included and also co-located in the joint operations center. In these instances, SDF personnel, while working alongside members of the National Guard (in both Federal and state active-duty status) and active-duty military members, would almost certainly use Federal equipment, which is not prohibited by 32 U.S.C. §109(d).

New York and New Jersey SDF personnel supported the response to the attack on September 11, 2001, and SDF personnel from eight states supported recovery efforts as military volunteers within their states following Hurricane Katrina. This SDF activity most likely entailed interaction with National Guard and DoD personnel and use of National Guard and DoD resources. If so, it did not violate the prohibitions of 32 U.S.C. §109(d).

<sup>19</sup> National Guard Regulation 10-4, “Organization and Functions: National Guard Interactions with State Defense Forces,” November 2, 2011, paragraph 2-1.b and 2-3.b.

The Emergency Management Assistance Compact provides form and structure for interstate mutual aid in response to disasters, clarifying liability and reimbursement requirements. While this is a state-to-state agreement, implementation of the compact often includes a request for state National Guard mutual assistance. National Guard involvement invariably requires the use of Federal resources, with the expectation of cost reimbursement. The National Guard Bureau coordinates the loans of resources documented in cooperative agreements between the states. Again, misinterpretation of section 109(d), title 32, United States Code hinders state executives from effectively integrating National Guard and SDF personnel and resources.

A further subset of emergency response include situations when National Guard units on state active duty are brought under Federal funding, while command and control of the state National Guard remains with the governors.<sup>20</sup> This would probably occur during the Federal response to major disasters, in accordance with the Stafford Act.<sup>21</sup> Impacted states could use all available resources, including SDF, for those that have them. In these situations, enforcing a clear distinction between Federal and state efforts in order to ensure SDF do not improperly receive Federal funds in violation of 32 U.S.C. §109(d) would be extremely difficult without proper guidance and preparation.

### ***DoD Funded Assistance***

DoD could potentially provide support and services to SDF, providing the assistance was incidental to military training.<sup>22</sup> Support by units of the Armed Forces must accomplish valid military training, and assistance by individuals must involve tasks directly related to the specific military occupational specialty of the member. However, this provision would allow U.S. Army units to include SDF units and members in training events, providing the assistance did not “adversely affect the quality of training,” or “significant[ly] increase the cost of the training,” and the assistance did not include section 109(d), title 32, enumerated prohibitions.

### ***DoD Use of State Defense Forces Volunteers***

SDF members are unpaid volunteers whose ranks contain a significant number of former and retired members of the Armed Forces, as well as accredited and

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<sup>20</sup> Section 502(f), title 32, United States Code.

<sup>21</sup> Section 5121-5207, title 42, United States Code.

<sup>22</sup> Section 2012, title 10, United States Code, “Support and services for eligible organizations and activities outside the Department of Defense.”

state-licensed medical, legal, and other technical professionals. States have used, or considered using, SDF members to directly support National Guard units during training, pre-deployment, deployment, or post deployment activities.

In general, Federal agencies are prohibited from accepting voluntary services, unless otherwise authorized by law.<sup>23</sup> However, DoD could theoretically accept gratuitous services from SDF members. Gratuitous services are those instances in which the Federal Government receives the uncompensated services of an individual not in Federal service, through an advance agreement or contract in which the individual agrees to serve without compensation.<sup>24</sup>

Here again, misapplication of section 109(d), title 32, United States Code, adds further fiscal constraints. An overly broad interpretation prevents SDF members with professional certifications or other technical expertise from providing even gratuitous services to the National Guard in all but purely state-funded missions using state-purchased equipment. One state military department explained that guidance provided by the National Guard Bureau regarding this language resulted in the state expending funds to contract for medical services that were readily available from qualified volunteers. Access to these capabilities required proper application of the law and sufficient guidance for their use.

### ***State Use of Non-DoD Federal Funds***

Legal limitations impacted the state use of SDF units, as well as individual members. Established in 1993, the Corporation for National Community Service was responsible for distributing more than \$250 million under the AmeriCorps program, including grants to coordinate and support homeland security.

The office of the South Carolina Adjutant General applied for a \$1 million Federal AmeriCorps multi-year grant to enhance state capability in the areas of public safety, public health, and emergency preparedness. To obtain and execute the grant, the Adjutant General established an AmeriCorps organization using other state personnel. In that DoD originally stated that SDF “would enable us to strengthen a weak spot in our civil-defense program,”<sup>25</sup> this example further supports the need for DoD to provide proper guidance.

<sup>23</sup> Section 1342, title 31, United States Code and DoD Financial Management Regulation volume 14, chapter 2, paragraph 020101.B.

<sup>24</sup> 30 Opinion Attorney General 51 (1913); 27 Comptroller Decision 131 (1920); 7 Comptroller General 810 (1928).

<sup>25</sup> Prepared statement of Hugh M. Milton II, Assistant Secretary of the Army, Manpower and Reserve Forces, to the Senate Committee on Armed Services, July 28, 1955.

## Recommendations, Management Comments, and Our Response

### ***Recommendation A***

The Under Secretary of Defense for Policy, in coordination with the Office of General Counsel, clarify the position of the Department and characterize the level of coordination and interaction between the DoD Components and State Defense Forces permissible by statute.

### *Office of the Under Secretary of Defense for Policy*

The Under Secretary of Defense for Policy non-concurred with our recommendation, stating that “a consistent definition of the permissible use of DoD resources for SDFs is prescribed in 31 U.S.C. §1301(a), which provides: ‘Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.’”

### *Our Response*

We considered the management comments partially responsive. The intent of our recommendation was to alleviate observed inconsistency in the interpretation and application of the language contained in section 109(d), title 32, United States Code. Alleviation of these inconsistencies might afford DoD Components, primarily the National Guard, valuable opportunities to coordinate and interact with SDF to better leverage their unique capabilities and enhancing mission effectiveness of both entities.

While we still think that the Office of the Under Secretary of Defense for Policy should clarify and communicate to State Adjutants General the mechanism by which they can obtain a consistent interpretation of the permissible use of Federal resources by SDF, we accept management’s analysis of the risk associated with their proposed course of action.

## B. DoD Policy and Guidance

The Office of the Secretary of Defense and DoD agencies lacked policy outlining the sharing and loaning of DoD equipment or other guidance governing DoD-SDF interaction. As of March 2014, there was no DoD policy addressing SDF. Recent changes to DoD policy concerning the combined disaster response of DoD, the National Guard, and other state actors did not include any discussion of the role of SDF.

### ***DoD Policy Directly Addressing State Defense Forces***

In 1947, the Federal Government disbanded the war-time State Guard program and ceased issuance of Federal equipment. Congress reauthorized peace-time SDF in 1955. The Total Force Policy concept renewed interest in SDF beginning in 1979. In 1981, the Historical Evaluation and Research Organization prepared a study, at the request of the Assistant Secretary of Defense for Manpower, Reserve Affairs, and Logistics, detailing the history of SDF. In 1982, the Department of the Army drafted “Policy and Guidance for State Defense Forces.” The policy was never finalized.



Figure 5. California SDF Small Arms Training Team  
Source: California SMR

In 1987, the National Guard Bureau published National Guard Regulation 10-4, "Organization and Functions: State Defense Forces, National Guard Bureau, and State National Guard Interaction." The regulation provided guidance concerning, "[an] area in which the Department of the Army has traditionally been authorized to provide assistance to the States in equipping, arming, and training their State Defense Forces." It also identified "the Chief, NGB [National Guard Bureau] as the DoD executive agent and channel of communications between the States and the Federal Government on all matters pertaining to State Defense Forces." This was the first policy issued within DoD specifically addressing Federal interaction with SDF since their re-authorization in 1955.

The Army previously exercised some authority over SDF. In 1997, the Administrative Assistant to the Secretary of the Army issued Department of the Army Memorandum 10-1, "Executive Agent Responsibilities Assigned to the Secretary of the Army." The memorandum assigned responsibility for SDF within the Army to the Assistant Secretary of the Army for Manpower and Reserve Affairs, and formally assigned the National Guard Bureau the responsibility to "monitor and support" the SDF program.

As "Home Guards," SDF historically wore military uniforms. While section 771, title 10, United States Code (10 U.S.C. §771 [1956]), prohibits unauthorized wearing of, "the uniform, or a distinctive part of the uniform, of the Army, Navy, Air Force, or Marine Corps..." Army Regulation, since at least 1992, has authorized SDF to wear a uniform similar to the Army uniform.

State defense forces (SDF) may adopt the Army service and BDU [Battle Dress Uniform] uniforms, provided all service uniform buttons, cap devices, and other insignia differ significantly from that prescribed for wear by members of the U.S. Army. State insignia will not include "United States," "U.S.," "U.S. Army," or the Great Seal of the United States. Personnel of the SDF may wear a State-designed SDF distinguishing badge or insignia centered on the left pocket flap. The red nametape or nameplate will include the full title of the SDF (for example, "Texas State Guard"). The utility uniforms will contain a State SDF tape in lieu of "U.S. Army" over the left breast pocket. States wishing to adopt the Army service and utility uniforms will register with the Chief, National Guard Bureau.<sup>26</sup>

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<sup>26</sup> Current language, as of the date of this report, from Army Regulation 670-1, "Wear and Appearance of Army Uniforms and Insignia," February 3, 2005, Rapid Action Revision (RAR), issue date May 11, 2012.

The Army had not updated the uniform regulation to reflect changes to Army combat uniforms, choosing to issue All Army Action memorandums instead. The “wear-out” date for Battle Dress Uniforms was April 30, 2008. Even though the National Guard Bureau opined that they had no legal objection to SDF wearing Army combat uniforms, the regulation does not explicitly authorize the newer Army Combat Uniforms for SDF use. Again, inconsistent interpretation has led some SDF

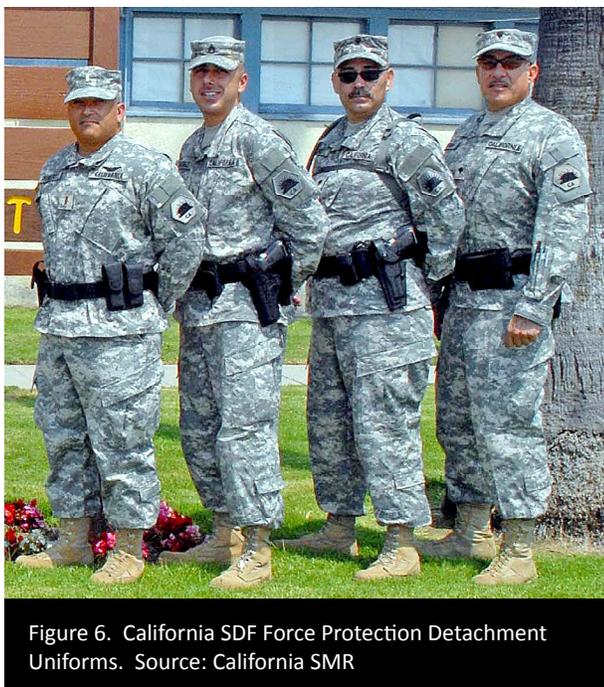


Figure 6. California SDF Force Protection Detachment Uniforms. Source: California SMR

to discordant uniform results. Several SDF converted to the new Army Combat Uniforms, using the “utility uniform” language as justification. Several SDF requested permission from the Department of the Army and received approval while others were denied permission to wear the Army Combat Uniform, demonstrating inconsistent responses.

In 2006, the section of Army Memorandum 10-1 assuming executive agency for SDF was invalidated following a review by the DoD Office of the Director of Administration and Management.<sup>27</sup> On June 24, 2011, the Chief, National Guard Bureau rescinded National Guard Regulation 10-4 which had not been updated since 1987.

The National Guard Bureau re-issued Regulation 10-4, “Organization and Functions: National Guard Interactions with State Defense Forces,” on November 2, 2011. The regulation recognized that National Guard units and SDF may cooperate during training, exercises, maneuvers, and domestic operations. The Regulation further restates the restrictions of section 109, title 32, United States Code, and cites policy governing awards and the wear of uniforms.

<sup>27</sup> In 2005-2006 the DoD Office of the Director of Administration and Management conducted a review of the assignment of all “Executive Agents,” in accordance with DoD Directive 5101.1, “DoD Executive Agent,” May 9, 2003. The Directive states that, “Only the Secretary of Defense or the Deputy Secretary of Defense may designate a DoD Executive Agent and assign associated responsibilities, functions, and authorities within the Department of Defense.”

The Regulation goes further, stating, “a State NG [National Guard] shall not spend federal funds (including pay and allowances) or use federal equipment in activities which have the primary purpose of training or otherwise supporting SDFs.”<sup>28</sup> However, National Guard organizations have appeared to interpret this as a prohibition on the expending of any federal funds or use of any federal equipment in activities that support the SDF in any manner. Such a total prohibition is not based on the provisions of the United States Code and has resulted in an unwarranted differentiation of SDF from other State entities.

Finally, Army Doctrine Publication 3-28, “Defense Support of Civil Authorities,” July 2012, the keystone Army doctrine for civil support, explicitly states that Publication 3-28 does not apply to SDF that are not part of the National Guard. Prior policy distinguished SDF from the National Guard and emphasized that, although they may wear uniforms similar to the Army, they exist as separate legal entities of the state and their authority, and activities are determined by the adjutant general of their state. The earlier manual stated, “This can lead to confusion, since, to civilians, they appear to be members of the Armed Forces.”<sup>29</sup>

### ***DoD Policy Relevant to Operations With State Defense Forces***

The 2012 National Defense Authorization Act codified the dual status option, known as Dual Status Commander, providing statutory authority for one individual to command Federal and state military forces simultaneously. It allows National Guard commanders in state status (“Title 32”) to be ordered to active duty (“Title 10”), while retaining their state commission. Conversely, active component officers (“Title 10”) can accept a commission in a state National Guard while retaining their Federal commission.

Consequently, in states that authorize and attribute to their SDF the same rights, privileges, and responsibilities as the state National Guard, officers of that state National Guard could exercise command and control over SDF units and personnel on state active duty. In some cases, SDF personnel could be integrated into the state military Joint Operations Center.

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<sup>28</sup> National Guard Regulation 10-4, “Organization and Functions: National Guard Interaction with State Defense Forces,” November 2, 2011, paragraph 2-1.b.

<sup>29</sup> Army Field Manual 3-28, “Civil Support Operations,” August 2010, section 1-33.

DoD Directive 5101.77, "National Guard Bureau," May 21, 2008, named the National Guard Bureau as a joint activity of DoD and the Chief, National Guard Bureau, as a principal advisor to the Secretary of Defense on matters involving non-federalized National Guard forces.<sup>30</sup> The duties assigned to the Chief illustrate the importance of the National Guard to Federal missions and includes:

Facilitating and coordinating with other Federal agencies, the Adjutants General of the States, the United States Joint Forces Command (USJFCOM), USNORTHCOM [United States Northern Command], U.S. Southern Command (USSOUTHCOM), and U.S. Pacific Command (USPACOM) the use of National Guard personnel and resources for operations conducted under [Title 32, United States Code] or in support of State missions.

While defining the National Guard Bureau as the channel of communications on all matters pertaining to the National Guard between the several states, the directive does not discuss interaction with SDF.

Elevation of the National Guard Bureau from a "joint bureau of the Army and Air Force," to a "joint activity of DoD," removed the Army's authority to task the National Guard Bureau. This severed the historical and remaining informal linkage between the Department of the Army and SDF that ran through the National Guard Bureau.

DoD Directive 5105.83, "National Guard Joint Force Headquarters - State (NG JFHQs-State)," January 5, 2011, established Joint Force Headquarters in each state, composed of the National Guard leadership, to support Federal missions and state missions, when appropriate. Each headquarters was organized to conduct state (Title 32 - under the command of the governor) or Federal (Title 10 - under Federal command) missions, and to render mutual support with Federal forces operating within that state. One specified task assigned to the headquarters was to "coordinate planning, training, and execution of NG homeland defense, National Special Security Events, defense support of civil authorities, and other domestic emergency missions within the United States." However, the directive also explicitly excludes SDF, stating that "Nothing in this Directive shall be construed as applicable to the defense forces of a State."

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<sup>30</sup> The DoD Directive implemented section 10501, title 10, United States Code, which was amended by Public Law 110-181 in 2008.

As part of this review, the assessment team interviewed representatives from U.S. Northern Command, the Office of the Assistant Secretary of Defense for Homeland Defense, the Office of the Assistant Secretary of Defense for Reserve Affairs, and the National Guard Bureau. Their views were consistent.

- U.S. Northern Command staff stated that SDF were state entities, lacked national military standards, qualifications, Federal background checks, and the means to verify readiness. They were not considered or included for military planning.
- The position of the representatives from the Office of the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs was that DoD has no relationship with, or jurisdiction over, the SDF, as they are state entities with no legal nexus to DoD.
- Representatives from the Office of the Assistant Secretary of Defense for Reserve Affairs stated that the law authorizing SDF places sole responsibility with the state; Federal funds cannot be used for SDF.
- In 2011, the Chief, National Guard Bureau said he considered SDF to be state agencies and that the nature and extent of interaction and support between the National Guard and SDF would be governed by state cooperative agreements.

In addition, in February 2011, the Military Departments, Combatant Commands, and National Guard Bureau reported conducting no activities in support of SDF during fiscal years 2000-2010, a period that included Operations Iraqi Freedom and Enduring Freedom and the response to Hurricane Katrina. The Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs also reported that the states had not requested DoD support for SDF during the same 10-year period.<sup>31</sup> Nevertheless, most states considered their SDF as part of their military establishment, and when used for other than pure state missions, the SDF/DoD interaction lacked adequate guidance.

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<sup>31</sup> Draft Report to the Senate and House Armed Services Committees on Homeland Defense Forces for Homeland Defense and Homeland Security Mission dated November, 2010 as requested by Committee on Armed Services, House of Representatives Report 108-491 per H.R. 4200, National Defense Authorization Act for Fiscal Year 2010.

## Recommendations, Management Comments, and Our Response

### ***Recommendation B***

Chief, National Guard Bureau, modify National Guard Bureau Regulation 10-4, "Organization and Functions: National Guard Interaction with State Defense Forces," to state that State Defense Forces be considered as any other State agency, with respect to State Defense Forces preparation for and participation in Federal responses, and the related use of Federal equipment, excepting the specific restrictions of section 109(d), title 32, United States Code.

### *Office of the Under Secretary of Defense for Policy*

The Under Secretary of Defense for Policy non-concurred with our original recommendation to develop and publish guidance for DoD Components governing interactions with SDF. Management stated that SDF were "treated like other State government entities that DoD may interact with, and there are provisions in force that address DoD Components' interactions with State entities, citing DoD Directive 1100.20, "Support and Services for Eligible Organizations and Activities Outside the Department of Defense," as an example.

### *Our Response*

The comments from the Under Secretary of Defense for Policy were partially responsive. We met with the Deputy Under Secretary of Defense for Homeland Defense Strategy and Force Planning, who asserted that additional DoD policy was not necessary. However, management agreed that, while SDF were unique in several ways, interaction with DoD Components should be at least on-par with other State agencies. In response, we have modified and redirected the recommendation to the Chief, National Guard Bureau, recommending that the Bureau change the regulation governing National Guard / SDF interaction to state that SDF be considered as any other State entity, excepting those specific restrictions stated in section 109(d), title 32, United States Code.



## Impacts

### Missed Opportunities and Efficiencies

The lack of interaction and misunderstandings between SDF and DoD was potentially preventing state executives from effectively including SDF capabilities and expertise in mission planning and execution. In addition to self-reported capabilities, diverse authors concluded that SDF are an untapped asset with the potential for significant cost-effective contributions to the defense of the homeland.

Various authors have highlighted the potential for SDF to provide support. For example, a National Defense University article, “Volunteer Military Organizations – An Overlooked Asset,”<sup>32</sup> lists pipeline and harbor security missions for the Alaska SDF. It also describes the month-long Arizona border surveillance provided by a volunteer civic organization as an example of a worthy mission for a volunteer military organization.

Also, a 2010 report by The Heritage Foundation stated that 10 of 13 SDF surveyed had a designated role in state or local emergency operations centers and concluded that they “continue to provide critical manpower at minimal cost.”<sup>33</sup> The 2010 report stated that only 4 of the 13 responding SDFs indicated that they pay their members when on duty.



Figure 7. A California SDF Soldier Instructs a National Guard Soldier.  
Source: California State Military Reserve

<sup>32</sup> The National Defense University – *Joint Forces Quarterly*, issue 43, 4<sup>th</sup> quarter 2006.

<sup>33</sup> “The 21<sup>st</sup>-Century Militia - State Defense Forces and Homeland Security,” James Jay Carafano, Ph.D., and Jessica Zuckerman, October 8, 2010.

SDF have contributed to state responses during recent major events.

- The New York Guard (SDF) reported that during the response to the September 11, 2001 attacks, the 244<sup>th</sup> Medical Detachment of the New York Guard provided medical services not available from other organizations.
- The governors of New York and New Jersey activated the New York State Guard, New York Naval Militia, and New Jersey Naval Militia to assist in response, recovery, and critical infrastructure security after the attack on September 11, 2001.
- An estimated 2,274 SDF personnel from 8 states participated in recovery efforts after Hurricane Katrina, assisting directly with recovery efforts or back-filling deployed state National Guard units.<sup>34</sup>

Nevertheless, systemic challenges hindered additional interaction between DoD and SDF. Certification, performance, and proficiency standards for SDF personnel vary by state and the states bear all associated costs for training. As discussed, DoD can, under certain circumstances, provide training and other support, but there was no statutory mechanism for states to reimburse DoD for expenditures.

In a 2005 report on forces for Homeland Defense and Homeland Security Missions, the Assistant Secretary of Defense for Homeland Defense wrote that “The Department [would] consider supporting governors who elect to employ State Defense Forces with surplus equipment and training pursuant to appropriately vetted requests through their adjutants general and the NGB [National Guard Bureau].”<sup>35</sup> The report further stated that SDF assistance could potentially reduce the demand for active-duty or National Guard forces during disasters and other catastrophic incidents. Further, such assistance might be particularly useful if other homeland security forces were unavailable due to deployment out of the state or the scale of the event.

However, as previously noted, DoD reported that the Military Departments, the Combatant Commands, and the National Guard Bureau had conducted no activities in support of SDF, and provided no defense support to civil authorities’ activities

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<sup>34</sup> IBID.

<sup>35</sup> “Homeland Defense Forces for Homeland Defense and Homeland Security Mission,” November 5, 2006, delivered to the Senate and House Armed Services Committees pursuant to House of Representatives Report 108-491, National Defense Authorization Act for Fiscal Year 2005.

in support of the training and equipping of SDF during fiscal years 2000-2010.<sup>36</sup> The report also stated that states had not requested DoD support for SDF activities, and that there was no statutory mechanism to allow DoD to retain payments from the states.

We found no objective cost-benefit analysis addressing the use of SDF in support of DoD missions that reviewed savings or efficiencies resulting from actual or potential contributions compared to tangible and intangible costs and liabilities. However, in 2011, the Chief, National Guard Bureau acknowledged that SDF might theoretically provide some benefit to DoD, but emphasized the need to first have specific DoD guidance and policy defining the role of the National Guard Bureau with respect to SDF.

## State Defense Forces Support to the National Guard

In response to a request for information, SDF commanders reported mission sets ranging from ceremonial tasks to supporting state National Guard forces with disaster recovery, shelter operations, and search and rescue. In addition to the three specialized missions reported earlier (see page 6), the California SDF reported maintaining specialized units trained to state law enforcement officer standards which provide volunteer armed force protection to National Guard assets.

Extended overseas contingencies since 2001 limited the availability of National Guard units to meet state requirements. Emergency management assistance compacts and other cooperative agreements allow states to support one another during emergencies and provide the legal framework for closing gaps in response capability by the National Guard as a whole. Several state statutes anticipate assumption of National Guard missions by SDF upon mobilization or under conditions designated by the proper state authority. In those states with untrained, unarmed SDF, it is unclear if they would be capable of effectively assuming National Guard missions upon mobilization.

Finally, age and fitness standards vary widely among SDF. Some states have no physical fitness or health screening standards, and others allow SDF to recruit members up to age 70, with service waivers beyond. Section 311, title 10, United States Code defines the militia as individuals between 17 and 45 years of age.

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<sup>36</sup> Draft Report to the Senate and House Armed Services Committees on Homeland Defense Forces for Homeland Defense and Homeland Security Mission dated November, 2010 as requested by Committee on Armed Services, House of Representatives Report 108-491 per H.R. 4200, National Defense Authorization Act for Fiscal Year 2010.

Admittance to and service in the Army requires health screening and continued physical fitness, standards similarly applied to the National Guard. These discrepancies between SDF and the rest of the state military establishment negatively impact SDF interaction, if any, with the Army and the National Guard.

Representatives from U.S. Northern Command opined that integrating SDF into combatant command planning and operations was untenable, given the ambiguity surrounding their authority to interact with Federal military entities and the National Guard. They further noted the inability to verify SDF readiness (unit and individual standards and qualifications) and execute Federal personnel security reviews.

## **Fiscal Law and Regulatory Guidance**

State use of SDF, as part of their state military establishment, requires interaction with DoD for many missions. For example, during emergency response exercises or preparedness training, SDF units or individuals, as part of their state military establishment, will work alongside other Federal and state military and civilian participants. Access to DoD information technology systems required use of the Common Access Card, provided to Federal military, civilian, and contractor employees. State employees also qualified for issuance of a card, while SDF did not. Officials from California reported that SDF members were denied Common Access Cards, even though they were given status as state employees. This challenge to basic access generated the conditions for a work-around of questionable legality.

Challenges associated with participation in training are compounded during response to an actual crisis. Total lack of authority for SDF to assume any control over Federal resources or perform National Guard missions using any Federal resources could cause significant conflict and confusion among Federal and state agencies. Proper SDF participation required active measures to ensure the state government provided all per diem, if authorized, and indemnification for the Federal Government from liability, if required. Workable procedures are required prior to an emergency to ensure laws and regulations are properly followed during a crisis.

## Conclusion

There are finite government resources available to meet internal national security challenges. Federal agencies must work effectively and efficiently to execute homeland security, homeland defense, and civil support missions. Lack of attention and guidance from senior officials in DoD has led to a disjointed approach to the integration and use by the states of SDF in support of missions involving Federal entities or resources. Using SDF to further the DoD mission constitutes an opportunity. However, such use will involve clearly defined access to Federal resources as provided to military auxiliaries<sup>37</sup> and other Federally-sponsored, state-implemented programs.

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<sup>37</sup> See Appendix F for a discussion of military auxiliaries.



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## Appendix A

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### History of State Defense Forces

Federal support for SDF has waxed and waned since their initial conception in 1916. Since 1955, there has been a gradual decoupling of DoD from SDF, even though SDF have received increased attention after the attacks of September 11, 2001.

#### ***The World Wars***

The National Guard was mobilized and deployed overseas in large numbers for the first time in support of World War I. As a result of the deployment of National Guard units, the states identified a need for additional troops to handle state-specific security missions. In response, Congress authorized U.S. Guards for internal security in states,<sup>38</sup> and the states created state guards, home guards, and, in some cases, county guards. Most state entities were disbanded after the end of the war and the return of National Guard units.

In 1940, Congress passed legislation authorizing states to have State Guards in peacetime in anticipation of the mobilization of the National Guard for World War II. During the war, virtually every state established a State Guard, and total enrollment numbered over 168,000 members. While not under direct command of the War Department, the Federal military establishment administered and coordinated State Guard activities. In December 1940, the Secretary of War designated the National Guard Bureau as the administrative agency for State Guard units, with responsibility for coordination between state military authorities and Commanding Generals of Corps areas (later Service Commands). The National Guard Bureau helped define the role of state military forces in successive emergency plans of the War Department, and then monitored the local coordination of state and Federal missions.

The Commanding General of Army Service Forces assumed responsibility for the formulation of War Department policies toward State Defense Forces. The Service Commands assisted state military authorities with State Guard training and development, furnishing part-time instructors and providing positions for State Guard officers at Service Command schools.

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<sup>38</sup> Section 61 (b) of the National Defense Act of 1916

The War Department maintained positive control over State Guard units through command inspections. While states organized and formed the unit, Federal inspection was a requirement for access to Federal property and other support. Units that did not meet established Federal standards could be denied support and disbanded.

### ***Post World War II***

Effective July 1947, Congress withdrew authority for states to maintain troops in peacetime. The states disbanded all State Guard units by the end of 1947.

In January 1949, the National Guard Bureau, in conjunction with the Office of Provost Marshall General, prepared a preliminary study on the use of state military forces in internal security. In April of the following year, the Office of the Army Chief of Operations (G-3) conducted a study on State Guards and internal security. In response to the Army study, the National Guard Bureau recommended that the Department of the Army encourage the formation of both state police and State Guard units, particularly military police units. The Department of the Army suggested limiting their role to cooperative planning and liaison with the states, but agreed to furnish arms, ammunition, clothing, and equipment, as available, providing such assistance did not interfere with the requirements of the Army.

In 1950, following the outbreak of hostilities on the Korean peninsula, Congress again authorized states to maintain troops, in addition to the National Guard, for a period of 2 years. In May 1951, the National Security Council and the Defense Department stated there was a need for non-military civil defense groups as wartime reserves under the supervision of the Federal Civil Defense Administration. Federal authority for state troops expired in September 1952 and most states disbanded their State Guard cadres.

In 1955, Congress authorized SDF in their current form. "In addition to its National Guard, if any, a State, the Commonwealth of Puerto Rico, the District of Columbia, Guam, or the Virgin Islands may, as provided by its laws, organize and maintain defense forces."<sup>39</sup>

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<sup>39</sup> "Maintenance of other Troops," section 109, title 32, United States Code.

In 1969, the Gates Commission concluded that the most effective solution to end universal conscription would be to create an all-volunteer force. However, development of an all-volunteer military force depended heavily on the Total Force Concept, which required integration of the Active and Reserve components. Dependence of the Total Force Concept on Reserve Component forces increased the likelihood that states would be left without their National Guard troops if they were deployed overseas.<sup>40</sup>

The creation and expansion of SDF throughout the United States remained slow throughout the Vietnam War. In February 1979, the House Armed Services Committee received testimony that 13 states and Puerto Rico maintained an SDF in addition to their National Guard, but the roles, organization, equipment, and training were not standardized. Soon after, the Assistant Secretary of Defense for Reserve Affairs undertook a study of the history of Home Defense Forces. The realization of the all-volunteer force led many states to revive their SDF during the 1980s.

In 1981, the Adjutant General of the state of Washington was appointed by the Chief, National Guard Bureau to chair a committee on SDF and became, in practice, the National Guard Bureau spokesman for its position on SDF. In 1982, the National Guard Bureau viewed the SDF as an organization that would respond to natural disasters, civil disturbances and ensure continuation of vital public services, civil defense, and other specialized missions that might arise after mobilization of the National Guard. The National Guard Bureau stated that they believed the Federal Government should equip SDF, while National Guard technicians planned, organized, and coordinated SDF activities and maintained the equipment. The National Guard Bureau proposal included reimbursement by the Federal Government to the states for Federal or state missions performed by the SDF.

In 1987, the National Guard Bureau published National Guard Regulation 10-4, "Organization and Functions: State Defense Forces, National Guard Bureau, and State National Guard Interaction." Between publication of the regulation and the terrorist attacks of September 2001, the National Guard was not often deployed for Federal missions. During that time, the National Guard Bureau maintained that SDF be established as cadre organizations.<sup>41</sup>

<sup>40</sup> James Jay Carafano, "The Army Reserves and the Abrams Doctrine: Unfulfilled Promise, Uncertain Future," *Heritage Foundation Lecture* No. 869

<sup>41</sup> National Guard Regulation 10-4, paragraph 6.b.

## ***Post-9/11***

In January 2001, the U.S. Commission on National Security/21<sup>st</sup> Century suggested the primary mission of the National Guard become homeland security.<sup>42</sup> The attack on September 11, 2001, dramatically changed the focus of the National Guard mission from domestic to overseas operations.

At the same time, significant and comprehensive institutional and procedural changes throughout the executive branch, including the creation of the Department of Homeland Security and establishment of the Assistant Secretary of Defense for Homeland Defense and U.S. Northern Command, increased Federal participation to formerly state-centric responses.

The duration and frequency of National Guard deployments supporting Operation Enduring Freedom (Afghanistan) and Operation Iraqi Freedom shifted the focus of the National Guard mission from a strategic reserve to part of the operational forces. SDF were revitalized and selectively activated to assist in homeland security, emergency response, disaster recovery, and critical infrastructure protection to help fulfill state missions of deployed National Guard forces.

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<sup>42</sup> U.S. Commission on National Security/21<sup>st</sup> Century, "Road Map for National Security: Imperative for Change," February 15, 2001, also known as the Hart-Rudman Commission.

## Appendix B

### State Defense Forces Information Summary

Nineteen of 23 SDF Commanders and 18 state Adjutants General replied to the structured questionnaire. Specific information supporting report conclusions is summarized below.

*Table 1. Structured Questionnaire Responses from State Adjutants General and State Defense Force Commanders*

	STATE	Militia Status	State Code of Military Justice	Number of Personnel	Uniform*	Considered "Soldiers"	Considered "Lawful Belligerents"	Armed
1	Alabama	Organized	X	440	BDU	N	N	N
2	Alaska	Organized	X	106	BDU	N/A**	N/A	N
3	California	Organized	X	950	ACU, Other	Y	Y	Y
4	Connecticut	Organized	X	10	BDU	Y	N	Y
5	Georgia	Organized	X	800	ACU, Other	Y	Y	N
6	Indiana	Organized	X	279	ACU	Y	Y	Y
7	Maryland	Organized	X	437	ACU, Other	Y	Y	N
8	Massachusetts	Organized	X	10	ACU	Y	N	N
9	Mississippi	Organized	X	725	BDU	Y	Y	N
10	New Mexico	Organized	X	70	ACU, Other	N	N	N
11	New York	Organized	X	616	ACU, BDU, Other	Y	Y	N
12	Ohio	Organized	X	286	BDU	N	N	N
13	Oregon	Organized	X	108	BDU	Y	N	N
14	Puerto Rico	Organized	X	1608	ACU	Y	Y	N
15	South Carolina	Organized	X	1027	BDU, Other	Y	N	Y
16	Tennessee	Other		352	BDU	N	N	N
17	Texas	Organized	X	2062	ACU, BDU, Other	Y	N	N
18	Virginia	Organized	X	1066	BDU	Y	Y	N
19	Washington	Organized	X	53	ACU, Other	Y	N	N

Notes: \* Uniform abbreviations stand for Battle Dress Uniform (BDU) and Army Combat Uniform (ACU).

\*\* Information not provided (not available)

Respondent Summary:

- Eighteen of 19 considered their SDF as part of the organized militia.
- The same 18 of 19 subject SDF to the State Code of Military Justice.
- The 19 reported an aggregate total of just under 11,000 members on the rolls.
- Eight reported using the authorized but obsolete BDU uniforms exclusively, while the remaining 11 reported using a combination of BDU, ACU, and other uniforms.
- Fourteen of 18 recognized SDF members as “soldiers” in state military service.
- Eight of 18 recognized SDF members as “lawful belligerents” under the rules of war in accordance with Army Field Manual 27-10, “The Law of Land Warfare.”
- Only 4 of 19 authorized their SDF to be armed or provided weapons training.

## Appendix C

### State Defense Forces Structured Questionnaire for State Adjutants General



OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

January 4, 2011

MEMORANDUM FOR THE ADJUTANTS GENERAL OF STATES AND PUERTO RICO  
WITH STATE DEFENSE FORCES

SUBJECT: Request for Information – Evaluation of Department of Defense Interaction with  
State Defense Forces (D2010-DIP0E3-0156.000)

As part of an ongoing assessment, this office is reviewing the relationship between  
Department of Defense (DoD) and the State Defense Forces.

We are requesting information through the attached structured questionnaire, which includes  
questions on State Defense Force demographics, authorities, operations, readiness, and  
interaction with state National Guard and federal entities. Your responses will provide us with  
current and accurate data to assess effectiveness of and identify impediments to the relationship  
between DoD and the states concerning State Defense Forces.

Your participation in the questionnaire is critical to us meeting the evaluation objectives. We  
request you complete and return your responses by February 15, 2011. I strongly encourage  
each state to fully engage and provide the requested information.

Should you have any questions, please contact Mr. Gregory D. Sampson at (703) 604-9104  
or Mr. George P. Marquardt at 703-604-9159.

A handwritten signature in blue ink, appearing to read "K. Morfield", is positioned to the left of the typed name.

Kenneth P. Morfield  
Deputy Inspector General  
Special Plans and Operations

Attachment(s):  
State Defense Forces – Request for Information

## State Defense Forces Structured Questionnaire for State Adjutants General (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

### STATE DEFENSE FORCES - REQUEST FOR INFORMATION (Version for State Offices of Adjutants General)

We request the State Adjutant General (TAG) or designee complete this questionnaire. Please check the appropriate boxes and type narrative answers in the expandable text box spaces provided. Submit supporting documentation such as copies of state laws, regulations, applicable policy and standard operating procedures supplementing your responses as necessary.

Return the completed questionnaire, along with any supporting documentation, via electronic mail to [SDF@dodig.mil](mailto:SDF@dodig.mil) **NO LATER THAN** February 15, 2011. Send any questions that arise during completion of the questionnaire to the same electronic mail address.

We prefer supporting documentation in electronic format, but regular mail is acceptable. Address mail to:

DOD Inspector General  
ATTN: Mr. Gregory D. Sampson.  
400 Army-Navy Drive, Suite 814  
Arlington, VA 22202

**NAME OF STATE**

**OFFICIAL STATE TITLE OF TAG**

**TAG POC FOR SURVEY RESPONSES:**

**Rank/Title**

**Name**

**Address**

**Phone**

**Email**

## State Defense Forces Structured Questionnaire for State Adjutants General (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

1. Does the state Military Department recognize members of the State Defense Force (SDF) as "Soldiers" in the military service of their state?

- Yes (explain why)  
 No (explain why not)

2. Does the state Military Department recognize members of the SDF as lawful belligerents under the rules of war in accordance with Army Field Manual 27-10, "The Law of Land Warfare"?

- Yes (explain why)  
 No (explain why not)

3. Has the state Military Department and /or other state government entity, within the last ten years, conducted a formal and documented study and/or gap analysis of SDF mission and tasks?

- Yes (provide an executive summary of the report)  
 No

## State Defense Forces Structured Questionnaire for State Adjutants General (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

4. Does the state Military Department authorize and approve of the arming and/or training of SDF members in the use of weapons?

- Yes (describe weapons and training)
- No (explain why not)

5. Do assigned SDF tasks fill a state military mission gap that is otherwise not available from existing non-military (civilian) organizations such as search and rescue, Red Cross, auxiliary/reserve (unarmed) police, service contractors, Civil Air Patrol, FEMA Civil Emergency Response Teams, Medical Reserve Corps, etc?

- Yes (explain how)

- No

6. Does the state Military Department support and approve of the SDF receiving direct or in-kind mission-related resources from the Department of Defense (DoD) to support state security tasks?

- Yes (explain why)
- No (explain why not)

## State Defense Forces Structured Questionnaire for State Adjutants General (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

7. Does the state Military Department support and approve of the SDF receiving direct or in-kind mission-related resources from Federal entities other than DoD to support state security tasks?

- Yes
- No (explain why)

8. What positive interaction has occurred, if any, between the TAG and the NGB/DoD regarding resourcing, training, and other support for SDF mission(s)?

9. What impediments have been encountered or perceived, if any, between the TAG and the NGB/DoD regarding resourcing, training, and other support for SDF mission(s)?

10. The DODIG welcomes any other information not otherwise requested on this survey that the TAG may want to communicate to us. You may provide additional information on this form or in separate correspondence.

## Appendix D

### State Defense Forces Structured Questionnaire for State Defense Force Commanders



OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-4704

January 4, 2011

MEMORANDUM FOR STATE DEFENSE FORCE COMMANDERS

SUBJECT: Request for Information – Evaluation of Department of Defense Interaction with State Defense Forces (D2010-DIP0E3-0156.000)

As part of an ongoing assessment, this office is reviewing the relationship between Department of Defense (DoD) and the State Defense Forces.

We are requesting information through the attached structured questionnaire, which includes questions on State Defense Force demographics, authorities, operations, readiness, and interaction with state National Guard and federal entities. Your responses will provide us with current and accurate data to assess effectiveness of and identify impediments to the relationship between DoD and the states concerning State Defense Forces.

Your participation in the questionnaire is critical to us meeting the evaluation objectives. We request you complete and return your responses by February 15, 2011. I strongly encourage each state to fully engage and provide the requested information.

Should you have any questions, please contact Mr. Gregory D. Sampson at (703) 604-9104 or Mr. George P. Marquardt at 703-604-9159.

*FOR*   
Kenneth P. Moorefield  
Deputy Inspector General  
Special Plans and Operations

Attachment(s):  
State Defense Forces – Request for Information

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

### STATE DEFENSE FORCES - REQUEST FOR INFORMATION (Version for State Defense Force Commanders)

We request the State Defense Force Commander or designee complete this questionnaire. Please check the appropriate boxes and supply narrative answers in the expandable text box spaces provided. Submit supporting documentation such as copies of state laws, regulations, applicable policy and standard operating procedures supplementing your responses as necessary.

Return the completed questionnaire, along with any supporting documentation, via electronic mail to [SDF@dodig.mil](mailto:SDF@dodig.mil) **NO LATER THAN** February 15, 2011. Send any questions that arise during completion of the questionnaire to the same electronic mail address.

We prefer supporting documentation in electronic format, however, if necessary, regular mail is acceptable. Address mail to :

DOD Inspector General  
ATTN: Mr. Gregory D. Sampson  
400 Army Navy Drive, Suite 814  
Arlington, VA 22202

**NAME OF STATE:**

**OFFICIAL NAME OF SDF:**

**SDF POC FOR SURVEY/RESPONSES:**

**Rank/Title:**

**Name:**

**Address:**

**Phone:**

**E-mail:**

# State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

## **SECTION I: AUTHORITIES**

### **1. Military Status**

a. According to your state's law, is your SDF included in the organized militia, unorganized militia, or other status?

- Organized
- Unorganized
- Other ( please specify):

b. Are SDF officers appointed pursuant to Article 1, Section 8, Clause 16 of the United States Constitution per the authority reserved to the States in the appointment of Officers of the Militia?

- Yes
- No (explain why)

c. Under state law, do enlisted members and officers of the SDF have the same similar legal status, privileges, and /or immunities as members of the state National Guard (in state status) when called to State Active Duty (SAD) or in any other status?

- Yes
- No (describe the difference):

### **2. Military Justice, Liability and Other**

a. Are SDF units/personnel allowed by law to deploy and operate outside the geographical jurisdiction of the state when ordered by proper authority?

- Yes
- No

b. Are SDF personnel subject to the state's Code of Military Justice (the state equivalent to Title 10, United States Code, Sections 801-946, Uniform Code of Military Justice, while in State Active Duty (SAD), Inactive Duty for Training (IDT) or any other status?

- Yes (describe which statuses):

- No

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

c. Are there any substantive differences between the SDF and the NG regarding the legal application of the state Code of Military Justice?

Yes (describe the differences):

No

d. Are there any legal (sovereign) immunities (tort claims, etc.) that are applicable to SDF personnel when operating under SAD, IDT, or other approved statuses?

Yes (specify):

No

e. Are there any statutory re-employment protections and/or rights available to SDF personnel called to SAD under state law?

Yes (specify):

No

f. What privileges, entitlements, benefits, or other unique rights, not previously covered, are afforded to personnel for their service in the SDF?

### **SECTION II: ADMINISTRATION**

#### **1. Personnel Strength**

a. What is your current strength for the following categories of personnel:

State Active Duty

Inactive Duty Training/Drill Status

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

b. Provide a copy of a current Table of Organization and Equipment (TO&E), Table of Organization (T/O) or Table of Distribution and Allowance (TDA) if available. To summarize, list the number of personnel assigned to the following grades:

E-1 to E-4	<input style="width: 90%;" type="text"/>	O-1 to O-3	<input style="width: 90%;" type="text"/>
E-5 to E-9	<input style="width: 90%;" type="text"/>	O-4 to O-6	<input style="width: 90%;" type="text"/>
W-1 to W-5	<input style="width: 90%;" type="text"/>	O-7 +	<input style="width: 90%;" type="text"/>

c. Indicate the total number of current SDF members that have prior service in the U. S. Armed Forces (include service in the Reserves and National Guard).

d. If reported to your respective Adjutant General, indicate the total dollar value of man-hours provided to the state and local communities during Fiscal Year 2010 in the performance of SAD missions, IDT activities and authorized (other) non-military community assistance missions. If available, list the value separately for each category.

TOTAL	\$ <input style="width: 90%;" type="text"/>	SAD	\$ <input style="width: 90%;" type="text"/>
		IDT	\$ <input style="width: 90%;" type="text"/>
		OTHER	\$ <input style="width: 90%;" type="text"/>

e. Describe the number and capacity of SDF personnel directly augmenting the State Military Department/National Guard. Identify the offices, programs and units being augmented.

**2. Enlistment/Appointment and Retention Qualifications**

a. Describe medical, physical fitness, and height/weight control qualifications for enlistment, appointment, and retention in the SDF.

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

b. If qualifications are listed in 2 a. above, describe the process used to verify that current personnel and prospective applicants meet the standards, and in the case of height/weight control, what remedies/corrective actions are available should they fail to meet the standard.

c. Describe any background checks, personnel security, and moral character qualification requirements for enlistment/appointment and retention. Also, describe the process used for verifying that current personnel and prospective applicants meet these requirements.

### 3. Uniforms

a. What uniform(s) are currently used by SDF personnel?

ACU (Army Combat Uniform)

BDU (Battle Dress Uniform)

Other (please specify) \_\_\_\_\_

None (skip to Section III)

b. What distinctive modifications have been applied to the uniforms used, if any?

c. Have the uniforms as described in question 3 been registered with the Chief, National Guard Bureau, in accordance with National Guard Regulation 10-4, Section 12, paragraph 1?

Yes

No (explain why)

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

d. Did another DoD component and/or military Service approve the uniforms selected in question 3 a?

Yes (explain how approval was obtained)

No

### **SECTION III: OPERATIONS**

#### **1. Mission**

a. List the mission(s) of the SDF in your state. Also, identify whether the mission is statutory and /or assigned, and the statutory or assigning authority.

b. Has the SDF developed (or been assigned) a list of associated tasks and sub-tasks necessary to meet the SDF mission? This would be similar to the U.S. Army's Mission Essential Task List (METL). If so, list each task and sub-tasks (if applicable).

#### **2. Capabilities and Readiness**

a. Describe the SDF's capabilities in narrative form for functional areas identified below in fewer than 300 words for each area. List required functional qualifications for personnel assigned such as state/national licenses, academic degrees, state and/or Federal military service schools, and national Guard-provided training, endorsements, etc.

Describe in item 11 additional SDF capabilities not discussed previously.

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

(1) Aviation/Airlift *(include type and number of aircraft)*

(2) Command and Control (C2) *(includes JAG, chaplain and other staff functions)*

(3) Chemical, Biological, Radiological, Nuclear and high yield Explosives (CBRNE) response

(4) Engineering

(5) Medical *(includes physicians, physician assistants, nurses and other allied health professionals but does not include medics)*

(6) Communications *(includes information technology/management)*

(7) Transportation *(also include number/types of vehicles authorized for military operations)*

(8) Security *(Military Police, Constabulary, Troops assigned security duties, etc.)*

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

(9) Logistics

(10) Maintenance

(11) Other (if applicable)

b. Describe training and qualifications required for all SDF personnel in order to maintain currency and readiness to meet the needs of the SDF mission.

c. Describe weapons qualification requirements (if any) for SDF personnel. List types of weapons trained on/qualified with, as well as intent of the training and qualification, such as protection and defense of SDF personnel, unit equipment, and /or property under the care or charge of SDF personnel during authorized missions.

d. Describe the formal command inspection program for units, personnel, and equipment, if any. Describe any external formal evaluation and/or inspection activities by the state National Guard, Inspector General, Military Department and/or Office of the Adjutant General.

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

e. Describe appropriations (funds) allocated for use by the SDF by the state. Describe other funds from all sources, to include grants/cooperative agreements (local, State, Federal) that support SDF activities, operations and personnel.

### 3. Organization and Coordination

a. Is the SDF integrated into the Joint Staff Headquarters - State and/or any other state command and control entity?

Yes (describe how)

No

b. Does the SDF implement the National Incident Management System (NIMS) in planning and operation?

Yes (describe how)

No

c. Are SDF personnel and resources included as options in plans pursuant to an Emergency Management Assistance Compact request from another state?

Yes (describe how)

No

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

d. Is the SDF included in the state's Military Department/National Guard Level 3 "All Hazards" contingency plans responding to threats/potential disasters as determined by the state Adjutant General?

Yes (describe how)

No

e. Does the SDF have plans or readiness procedures, in coordination with the state Military department and/or National Guard, in the event the SDF is federalized as a militia force (not as part of the Armed Forces per the prohibition in Title 32, United States Code, Section 109) pursuant to the Insurrection Act as authorized under Title 10, United States Code, Sections 331-333?

Yes (describe how)

No

**4. If your mission, as described in Section III of this survey, includes domestic law enforcement tasks, answer the following two questions. Such tasks include, but are not limited to: civil disturbance support operations; access, traffic and crowd control; site, perimeter, and area security operations; critical infrastructure protection; convoy security; high risk personnel security; criminal investigations support.**

a. Describe what measures, procedures and requirements exist to validate training and skill required to accomplish domestic law enforcement tasks. Include information regarding state and/or federal training standards used, as well as validation and/or accreditation procedures.

b. Describe the rules in the use of force policy and how they are determined.

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

### **SECTION IV: INTERACTION WITH STATE NATIONAL GUARD AND FEDERAL ENTITIES**

#### **1. SDF Interaction with State National Guard**

a. Has the SDF requested any access to state National Guard training, equipment, and/or facilities?

Yes (describe how)

No

b. Has the SDF experienced positive interaction and coordination between the SDF and the state National Guard regarding resourcing, training, and any other support for the SDF mission(s) ?

Yes (describe how)

No

c. Has the SDF experienced any impediments to effective cooperation with the state National Guard concerning resourcing, training, and any other support for the SDF mission(s) ?

Yes (describe how)

No

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

### 2. SDF Interaction with Federal Entities

a. Are there SDF policies and procedures for requesting assistance, support, equipment, funding, guidance, or other support from the NGB/DoD?

Yes (describe )

No

b. Has the SDF requested any access to training, equipment, facilities, funding and/or other support from the NGB/DoD?

Yes (describe )

No

c. What positive interaction and coordination has occurred, if any, between the SDF and the NGB/DoD regarding resourcing, training, and any other support for the SDF mission(s) ?

d. Has the SDF experienced any impediments to effective cooperation with the NGB/DoD concerning resourcing, training, and any other support for the SDF mission(s) ?

## State Defense Forces Structured Questionnaire for State Defense Force Commanders (cont'd)

Department of Defense, Office of Inspector General, Special Plans & Operations, Project Number D2010-DIP0E-0156.000

e. Has the SDF submitted requests to Federal entities other than NGB or DoD for assistance, support, equipment, guidance and/or funding? If yes, identify which entities and describe the nature, date, and disposition of the requests.

Yes (describe )

No

### **SECTION V: ADDITIONAL ISSUES**

The DODIG welcomes any other information not otherwise requested for on this survey that the SDF may want to communicate to us. You may provide additional information on this form or in separate correspondence.

## Appendix E

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### Scope and Methodology

This report addresses the relationship and interaction between DoD and state military entities known as SDF. As a result of our research, we determined that DoD did not manage the SDF program. We therefore excluded that element of our objective from this report.

We conducted this assessment in accordance with the standards published in the Quality Standards for Inspections. We planned and performed the assessment to obtain sufficient and appropriate evidence to provide a reasonable basis for our observations and conclusions, based on our assessment objectives.

We researched the history of State Defense Forces. We reviewed Federal and state laws and regulations as well as published regulations and doctrine from the Office of Management and Budget, Joint Staff, and other DoD policy with regard to SDF. We examined articles and other publications provided by the Assistant Secretary of Defense for Homeland Defense, U.S. Northern Command, Joint Chiefs of Staff, National Guard Bureau, U.S. Army, and several state National Guard and Defense Forces.

We conducted 22 interviews and/or visited representatives from the Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, Assistant Secretary of Defense for Reserve Affairs, Secretary of the Army, Assistant Secretary of the Army for Manpower and Reserve Affairs, National Guard Bureau, U.S. Northern Command, and the National Guard and Defense Forces of several states. We also met with representatives of the State Guard Association of the United States and several senior leaders of state Defense Forces to discuss their interpretation of regulations.

We conducted site visits to United States Northern Command in July 2010 and to the State Guard Association of the United States convention in Albuquerque, New Mexico, in October 2010.

The team prepared and distributed structured questionnaires to each of the 22 states and 1 territory with current active State Defense Forces. Two versions were sent to each state: One version to the Commanding General of the State Defense Force and the other to The Adjutant General. The version from Commanding Generals of the State Defense Force focused on SDF demographics and operational missions and capabilities. The version for the Adjutants General asked questions concerning legal status, state policy, and interaction between the National Guard and the State Defense Force within the state. We received 19 responses from SDF commanders and 18 from state adjutant's general.

## Appendix F

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### Other Military Auxiliaries

The U.S. Navy, Air Force and Coast Guard have well regulated and funded military auxiliaries consisting mostly of uniformed civilian volunteers: The Naval Militia, Civil Air Patrol, and the U.S. Coast Guard Auxiliary.

#### ***Naval Militia***

The Naval Militia is established in Federal statute and administered under the authority of a state government.<sup>43</sup> Similar to the National Guard, Naval Militias are considered part of the organized militia under Federal law. Unit members are Navy and Marine Corps reservists, retirees, and other volunteers. Seamen and state Marines belonging to Naval Militias may be enlisted or commissioned into the Federal sea services at the rank for which they are qualified, at the discretion of the service secretary.

The Secretary of the Navy may make vessels, material, armament, equipment, and other facilities of the Navy and the Marine Corps available to Naval Militia units. In order to qualify, “at least 95 percent of the members of the portion or unit of the Naval Militia to which the facilities would be made available are members of the Navy Reserve or the Marine Corps Reserve; and the organization, administration, and training of the Naval Militia [must] conform to standards prescribed by the Secretary.”

#### ***Civil Air Patrol***

The Civil Air Patrol is a non-profit corporation that serves as the official auxiliary of the U. S. Air Force. Chartered by Congress and provided with Federal funding, the Civil Air Patrol performs emergency services, aerospace education, and cadet training as assigned by the U.S. Air Force. Headquarters, Civil Air Patrol is located on Maxwell Air Force Base and staffed with nearly 100 fulltime civilian employees, who provide support to 57,000 members stationed in all 50 states, the District of Columbia, and Puerto Rico.

The U.S. Air Force provides direct linkage between the service and it’s auxiliary. It is responsible for providing guidance, assistance, and oversight to Civil Air Patrol organizations nationwide, and serves as the Air Force program office executing

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<sup>43</sup> Sections 7851-7854, title 10, United States Code.

the Civil Air Patrol cooperative agreement. Headquarters Civil Air Patrol – U.S. Air Force is staffed with 19 Air Force active-duty military and civil servants, and is also located at Maxwell Air Force Base. The eight geographic regions of Civil Air Patrol – U.S. Air Force include over 350 active-duty and reserve members of the U.S. Air Force.

While present in virtually all U.S. states and territories, the Civil Air Patrol is U.S. Air Force-centric. Civil Air Patrol – U.S. Air Force officials stated that, in some states, the relationship between the Civil Air Patrol and the host state is minimal to non-existent, bordering on indifference.

### ***U.S. Coast Guard Auxiliary***

The United States Coast Guard Auxiliary was founded in 1939 as a nonmilitary organization administered by the Commandant under the direction of the Secretary.<sup>44</sup> The 32,000 volunteer members are U.S. citizens, 17 years or older and stationed in all 50 states, Puerto Rico, the Virgin Islands, American Samoa, and Guam. Unlike the other services auxiliaries, the statute establishing the U.S. Coast Guard Auxiliary addresses Coast Guard use of private, corporate, partnership, or association vessels and other equipment, and authorizes the expenditure of Coast Guard appropriations for compensation for such use.

Members of the U.S. Coast Guard Auxiliary are probably best known for public education through boating safety classes and vessel safety checks. However, the Coast Guard Authorization Act of 1996 allowed Auxiliary members to assist the Coast Guard in performance of any function, duty, role, mission, or operation authorized by law and authorized by the Commandant.

## **Comparisons With State Defense Forces**

Each of the service auxiliaries differ, but have commonalities with SDF. The Naval Militia and SDF are both uniform-wearing military organizations, although the Naval Militia is akin to the National Guard as part of the organized militia of the United States. SDF are similar to the Civil Air Patrol and the U.S. Coast Guard Auxiliary in that their members are unpaid volunteers, with the major difference being that in most states SDF are considered part of the state military establishment and are subject to involuntary call to state active duty.

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<sup>44</sup> Sections 821-832, title 14, United States Code.

The primary and most significant functional characteristic differentiating SDF from the rest is the lack of a Federal nexus resulting from section 109(d), title 32, United States Code. The other three organizations each have a strong connection to their Federal services. The majority of Naval Militia personnel are also reserve members of their respective services. There are over 250 active-duty and reserve members of the U.S. Air Force assigned to provide advice and liaison to the Civil Air Patrol. The Commandant of the Coast Guard directly administers the U.S. Coast Guard Auxiliary. The Civil Air Patrol is even explicitly authorized to use National Guard facilities and equipment, and receive technical and administrative support.<sup>45</sup> SDF have no such authorization.

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<sup>45</sup> Section 508, title 32, United States Code, "Assistance for certain youth and charitable organizations," in addition to the Civil Air Patrol, includes the Boy and Girl Scouts of America, Boys and Girls Clubs of America, Campfire Boys and Girls, Police Athletic League, and the Special Olympics, among others.

# Management Comments

## Under Secretary of Defense for Policy



POLICY

UNDER SECRETARY OF DEFENSE  
2000 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-2000

DEC - 5 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR SPECIAL PLANS AND OPERATIONS

SUBJECT: Evaluation of Department of Defense Interaction with State Defense Forces (Project No. D2010-DIP0E3-0156.000)

Thank you for the opportunity to review your report on DoD Interaction with State Defense Forces (SDFs). After reviewing the report and coordinating with OUSD Comptroller, OUSD P&R, NGB, and OGC, we have determined there is no further action on our part as there are already policies in place that address both issues. Our determination is based on the fact that SDFs are organized by the State and like other State entities (e.g., State Patrol, Emergency Management Staffs, etc.) serve the Governor to achieve State ends. Treating SDFs different than other State entities would set a bad precedent that could require separate policies to govern DoD interaction for each State entity. Therefore on the specific recommendations, I submit the following:

- Recommendation A: Under Secretary of Defense for Policy, in coordination with the DoD Office of General Counsel, provide a consistent definition of the permissible use of resources provided from “funds of the United States” by State Defense Forces.
- Non-Concur. A consistent definition of the permissible use of DoD resources for SDFs is prescribed in 31 U.S.C. §1301(a), which provides: “Appropriations shall be applied only to the objects for which the appropriations were made except as otherwise provided by law.”
- Recommendation B: Under Secretary of Defense for Policy, in coordination with the Under Secretary of Defense Comptroller; Chief, National Guard Bureau; and the Assistant Secretary of Defense for Reserve Affairs, develop and publish guidance for DoD Components governing interactions with State Defense Forces.
- Non-Concur. SDFs are treated like other State government entities that DoD may interact with, and there are provisions in force that address DoD Components’ interactions with State entities, including State Defense Forces. One example of existing policy on DoD’s relationship with State entities is DoD Directive 1100.20, *Support and Services for Eligible Organizations and Activities Outside the Department of Defense*, which implements 10 U.S.C. § 2012 (Support and Services for Eligible Organizations and Activities Outside DoD).



## Under Secretary of Defense for Policy (cont'd)

Should you have any questions please have your staff contact my POC for this action, ■



James N. Miller

## Acronyms and Abbreviations

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<b>California SDF</b>	California State Military Reserve
<b>IAW</b>	In accordance with
<b>New York SDF</b>	New York Guard
<b>NGB</b>	National Guard Bureau
<b>NG</b>	National Guard
<b>SDF</b>	State Defense Forces
<b>Texas SDF</b>	Texas State Guard
<b>USJFCOM</b>	United States Joint Forces Command
<b>USNORTHCOM</b>	United States Northern Command
<b>USPACOM</b>	United States Pacific Command
<b>USSOUTHCOM</b>	United States Southern Command



# **Whistleblower Protection**

## **U.S. DEPARTMENT OF DEFENSE**

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