



CHAIRMAN OF THE JOINT CHIEFS OF STAFF INSTRUCTION

J3
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CJCSI 3121.02
31 May 2000

RULES ON THE USE OF FORCE BY DOD PERSONNEL PROVIDING SUPPORT TO LAW ENFORCEMENT AGENCIES CONDUCTING COUNTERDRUG OPERATIONS IN THE UNITED STATES

References: See Enclosure B.

1. Purpose. This instruction establishes rules regarding the use of force by DOD personnel during military operations that provide support to law enforcement agencies (LEAs) conducting counterdrug (CD) operations in the United States.
2. Cancellation. Not applicable.
3. Applicability
 - a. This instruction applies to all DOD organizations and agencies conducting CD military support operations in the United States.
 - b. This instruction applies to DOD support to LEAs conducting CD operations in the United States, which includes the land area, internal waters, territorial sea, and airspace of the United States, as well as that of US territories, possessions, and commonwealths; except as provided below.
 - c. This instruction does not apply to US military units or personnel while under OPCON or TACON to the USCG in support of CD operations. While OPCON or TACON to USCG, such units or personnel will follow the Use of Force Policy issued by the Commandant, USCG.
 - d. This instruction does not apply to CD support provided by National Guard or Air National Guard units except when in the service of the United States.

e. This instruction does not apply to DOD support to CD operations outside the land area, internal waters, territorial sea, and airspace of the United States, as well as that of US territories, possessions, and commonwealths. Such operations are governed by Standing Rules of Engagement for US Forces or the Use of Force Policy issued by the Commandant, USCG, or other authorities.

f. This instruction does not apply to the following:

(1) Investigations of drug offenses committed by military members or committed on Federal military installations, even if such investigations are conducted in cooperation with civilian law enforcement officials.

(2) Investigations or operations conducted by military criminal investigative organizations under their respective Service regulations.

4. Policy. See Enclosure A.

5. Definitions. See Glossary.

6. Responsibilities. The Joint Staff, J-3, Counternarcotics Division, is responsible for the maintenance of these rules on the use of force.

7. Summary of Changes. Not applicable.

8. Releasability. This instruction is approved for public release; distribution is unlimited. DOD components (to include the combatant commands), other Federal agencies, and the public may obtain copies of this instruction through the Internet from the CJCS Directives Home Page--<http://www.dtic.mil/doctrine>. Copies are also available through the Government Printing Office on the Joint Electronic Library CD-ROM.

9. Effective Date. This instruction is effective upon receipt.



HENRY H. SHELTON
Chairman
of the Joint Chiefs of Staff

Enclosures:

A--Rules on the Use of Force by DOD Personnel Providing Support to Law Enforcement Agencies Conducting Counterdrug Operations in the United States

B--References

GL--Glossary

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ENCLOSURE A

RULES ON THE USE OF FORCE BY DOD PERSONNEL PROVIDING SUPPORT
TO LAW ENFORCEMENT AGENCIES CONDUCTING
COUNTERDRUG OPERATIONS IN THE UNITED STATES

1. Purpose and Scope. To provide rules on the use of force by DOD personnel during military operations that provide support to law enforcement agencies (LEAs) conducting CD operations in the United States. This includes the land area, internal waters, territorial sea, and airspace of the 50 states of the United States, as well as that of US territories, possessions, and commonwealths.

2. Policy. Nothing in this instruction should be construed to limit the authority, right, and responsibility of the unit commander to use necessary force consistent with this instruction in protecting his or her unit or personnel.

a. Special Considerations. This section provides legal and policy guidance for DOD personnel conducting military operations that provide support to LEAs conducting CD operations in the United States.

(1) The Secretary of Defense has designated countering production, trafficking, and use of illegal drugs as a “high priority national security” mission of the Department of Defense. As such, DOD support to law enforcement CD operations is a military operation other than war mission of the Department of Defense that supports law enforcement in countering drugs at their source, in transit, and within the United States.

(2) DOD personnel will provide support to the CD activities of LEAs consistent with applicable law and policy.

(3) DOD personnel will not act as law enforcement personnel and will not execute civilian law while conducting military operations that provide CD support to LEAs in the United States.

(4) DOD CD support to LEAs will remain at all times distinguishable and separate from the law enforcement activities and functions undertaken by the LEAs.

(5) DOD personnel will not directly participate in law enforcement activities and functions such as a search, seizure, arrest, or other similar activities.

(6) DOD personnel, while conducting their military support operation, may use force in individual or unit self-defense, or in defense of others within the immediate vicinity of the DOD personnel, in accordance with paragraph 3.

(a) LEA personnel have the primary responsibility for protecting themselves. The right to use force in self-defense does not authorize DOD personnel to provide security for law enforcement personnel or others. DOD personnel, however, may act in defense of such personnel consistent with the guidance set forth in this instruction.

(b) DOD personnel may not use force to facilitate the accomplishment of the underlying LEA CD operation. The right to use force in self-defense may not be used to justify the substitution of DOD personnel for LEA personnel or to augment the offensive use of force by these LEA personnel in law enforcement operations.

b. Accompanying LEAs. Except as provided in 10 USC 379, and consistent with such agreements concluded thereunder, DOD personnel are prohibited from accompanying US Federal, state, or local LEA personnel on actual CD field operations or participating in any activity in which CD-related hostilities are imminent.

c. Confrontation with Nonmission Personnel and Civilians. DOD personnel will make every effort to avoid confrontation, armed or otherwise, with nonmission personnel and civilians.

d. Training in Drug Interdiction Areas. The limitations described in subparagraphs 2a and 2b do not prevent US military forces from conducting approved exercises or training in designated drug interdiction areas. Should exercises or training be conducted in drug interdiction areas, appropriate measures will be taken to ensure that US military forces do not deploy to or operate from locations where CD-related hostilities or confrontations with civilians, armed or otherwise, are likely to occur.

e. Training Requirement. Commanders will not permit DOD personnel to provide support to LEA CD operations within the United States unless those personnel have received appropriate, timely training on the use of force, including deadly force, as set forth in this instruction.

3. Action

a. Rules for Use of Force by DOD Personnel During Military Operations that Provide CD Support to LEAs in the United States

(1) DOD personnel will avoid confrontation with nonmission personnel and civilians. If confrontation, armed or otherwise, appears likely to occur, DOD personnel should, if circumstances permit, take the following actions:

(a) Alert all DOD personnel in the unit's vicinity or area and prepare to withdraw from the area.

(b) Notify the appropriate LEAs.

(c) Withdraw to a predesignated position (rally point) where confrontation with nonmission personnel and/or civilians will be avoided.

(2) If force other than deadly force (non-deadly force) can be used without unreasonably increasing the danger or threat of death or serious physical injury to DOD personnel or others within the immediate vicinity of DOD personnel, deadly force is not necessary.

(3) If feasible, and if to do so would not increase the danger to DOD personnel or others, a verbal warning to cease the threatening actions will be given before using deadly force.

(4) Warning shots are not authorized.

(5) DOD personnel may use force in individual or unit self-defense, or in defense of other persons within the immediate vicinity of the DOD personnel, or to prevent the actual theft or sabotage of property designated as vital to national security or inherently dangerous property. When force is used, only the minimum force necessary to control a situation or deter the use of force against DOD personnel or others within the immediate vicinity of threatened DOD personnel is authorized. DOD personnel, however, are not required to place themselves or other persons within their immediate vicinity, in unreasonable danger of death or serious physical injury before using deadly force.

(6) Use of Deadly Force

(a) "Deadly force" is force likely to cause death or serious physical injury. Use of deadly force must be objectively reasonable under all circumstances known to DOD personnel at the time. Force that is not likely to cause death or serious physical injury, but unexpectedly results in such harm or death, is not deadly force.

(b) Deadly force is not authorized unless it is necessary. The necessity to use deadly force arises when:

1. DOD personnel have a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to DOD personnel or others within their immediate vicinity; or

2. When there is no safe alternative to using such force, and without it, DOD personnel or others within their immediate vicinity would face imminent danger or threat of death or serious physical injury.

(c) “Imminent” does not necessarily mean “immediate” or “instantaneous.” The determination of whether a particular threat or danger is “imminent” is based on an assessment of all circumstances known to DOD personnel at the time. Thus, an individual could pose an imminent danger even if he or she is not at that very moment pointing a weapon at DOD personnel or someone within the immediate vicinity of the DOD personnel. Examples include:

1. An individual possesses a weapon or is attempting to gain access to a weapon under circumstances indicating an intention to use it against DOD personnel or other persons within the immediate vicinity of the DOD personnel.

2. An individual without a deadly weapon, but who has the capability of inflicting death or serious physical injury and is demonstrating an intention to do so (e.g., an attempt to run over DOD personnel or other persons within the immediate vicinity of the DOD personnel with a car).

(7) Weapons may not be fired solely to disable moving vehicles. Weapons may be fired at the driver or other occupant of a moving vehicle only when DOD personnel have a reasonable belief that the subject poses an imminent danger of death or serious physical injury to DOD personnel or other persons within the immediate vicinity of the DOD personnel, and the use of deadly force does not create a danger to others that would outweigh the likely benefits of its use.

b. Following and Recapture of DOD Personnel and Others

(1) When participating in CD military support operations in the United States, DOD personnel will immediately contact LEA personnel if DOD personnel or others within the immediate vicinity are captured. If no LEA personnel are available to do so, DOD personnel are authorized to follow, at a safe interval, persons holding the captured personnel, as long as such persons remain in sight or within contact until LEA personnel arrive and assume the recovery operation. DOD personnel will not attempt recovery operations unless LEA personnel are unavailable and the DOD personnel believe the captured personnel to be in imminent danger of death or serious physical injury.

(2) Unless previously authorized by the National Command Authorities (NCA), or agreed to in advance by the foreign nation involved, authority to follow persons does not include entry into the land territory of a foreign nation, its territorial sea, or its national airspace.

c. Temporary Detention of Persons. When participating in CD military support operations in the United States, DOD personnel are authorized to temporarily subdue and detain any person who poses an imminent danger of death or serious physical injury to DOD personnel or other persons within the immediate vicinity of the DOD personnel. Detention by DOD personnel is authorized only if no LEA personnel are available. Individuals temporarily detained by DOD personnel may be searched for weapons as a force protection measure. All detained persons will be released to the appropriate civilian authorities at the earliest opportunity.

d. Defense of Property

(1) Use of force

(a) Normally, deadly force is not authorized to defend property. However, DOD personnel may use force up to and including deadly force to prevent the actual theft or sabotage of property that has been designated by the NCA as vital to national security, or property that is inherently dangerous. Property is inherently dangerous to others if, in the hands of an unauthorized individual, it presents an imminent danger of death or serious bodily harm to others, such as high risk, portable, and lethal: missiles; rockets; arms; ammunition; explosives; chemical agents; and special nuclear materials.

(b) The use of force to defend property should not be confused with the use of force by DOD personnel in self-defense, or in defense of others within the immediate vicinity of DOD personnel, in accordance with paragraph 3. For example: Force up to and including deadly force may be used to defend a DOD helicopter that is being fired upon in flight, regardless of whether it has been designated as property vital to national security. By contrast, if a DOD helicopter with no weapons systems or weapons on board is unoccupied and parked on a tarmac, and has not been designated as property vital to national security, DOD personnel would not be authorized to use deadly force to prevent it from being stolen or damaged.

(2) Following persons and recovery of property.

(a) When participating in CD military support operations in the United States, DOD personnel will immediately contact LEA personnel if property vital to national security or inherently dangerous property is stolen. If no LEA personnel are available to do so, DOD personnel are authorized to follow, at a safe interval, and for a reasonable distance, persons fleeing with the

stolen property, as long as such persons remain in sight or within contact until LEA personnel arrive.

(b) DOD personnel authorized to follow as provided above may attempt recovery if LEA personnel remain unavailable and the following circumstances exist:

1. The stolen property is vital to national security; or
2. The stolen property is inherently dangerous and DOD personnel believe it will pose an imminent danger of death or serious physical injury to DOD personnel or others within their immediate vicinity.

(c) Unless previously authorized by the NCA or agreed to in advance by the foreign nation involved, authority to follow persons does not include entry into the land territory of a foreign nation, its territorial sea, or its national airspace.

(3) Temporary detention of persons. When participating in CD military support operations in the United States, DOD personnel are authorized to temporarily subdue and detain any person who attempts to engage in the theft or sabotage of property vital to national security or inherently dangerous property. Detention by DOD personnel is authorized only if no LEA personnel are available. Individuals temporarily detained by DOD personnel may be searched for weapons as a force protection measure. All detained persons will be released to the appropriate civilian authorities at the earliest opportunity.

4. Supplemental Instructions. Supplemental instructions to these rules may be requested from the Secretary of Defense or the CINC authorizing a particular CD support operation. The operation-authorizing official may publish additional instructions that are more restrictive in nature, but such restrictions may not detract from or infringe upon the right of self-defense.

ENCLOSURE B

REFERENCES

- a. Title 10, United States Code, Chapter 18, Sections 371-381
- b. Title 10, United States Code, Chapter 3, Section 124
- c. Title 18, United States Code, Chapter 67, Section 1385
- d. Public Law 101-510, Section 1004, National Defense Authorization Act for Fiscal Year 1991, as amended
- e. National Security Strategy, December 1999
- f. National Drug Control Strategy, 1999
- g. DOD Directive 5210.56, 25 February 1992, "Use of Deadly Force and the Carrying of Firearms by DOD Personnel Engaged in Law Enforcement and Security Duties"
- h. DOD Directive 5525.5, 15 January 1986, "DOD Cooperation with Civilian Law Enforcement Officials"
- i. SecDef memorandum, 6 October 1998, "Military Support to Counternarcotics Activities"
- j. OSD/DEP&S memorandum, 26 January 1995, "Priorities, Policies, and Procedures for Department of Defense Counterdrug Support to Domestic Drug Law Enforcement Agencies"
- k. OSD/DEP&S memorandum, 15 December 1994, "DOD Domestic Counterdrug Operational Support to Drug Law Enforcement Agencies"
- l. CJCSI 3121.01A, 15 January 2000, "Standing Rules of Engagement for US Forces"
- m. CJCSI 3710.01, 28 May 1993, "Delegation of Authority for Approving Operational Support to Drug Law Enforcement Agencies and Counterdrug - Related Deployment of DOD Personnel" (Under Revision)
- n. Joint Pub 3-07.4, 17 February 1998, "Joint Counterdrug Operations"

- o. Joint Pub 3-07, 16 June 1995, "Joint Doctrine for Military Operations Other Than War"
- p. Joint Pub 3-0, 1 February 1995, "Doctrine for Joint Operations"
- q. DOJ Memorandum, 16 October 1995, "Uniform Department of Justice Deadly Force Policy"
- r. Coast Guard Use of Force Policy, Chapter 4, Maritime Law Enforcement Manual, COMDTINST M16247 (series). Global Command and Control System (GCCS) address: <http://204.36.191.2/cghq.html//>

GLOSSARY¹

accompany – To physically be with or go with. DOD personnel "accompany" LEAs when they travel with such personnel on foot or in the same vehicle, aircraft, ship, or boat, including any groupings of the same. DOD personnel are prohibited from accompanying US drug law enforcement agents on actual counterdrug field operations or participating in any activity in which counterdrug-related hostilities are imminent.

actual CD field operations – Activities during which the intent, or the reasonable expectation, is that the US LEAs will conduct CD law enforcement activities such as search, seizure, arrest, or other similar activities. The word "search," as used in this context, does not include conducting aerial reconnaissance or detection, monitoring, and communication of movement of surface traffic in accordance with 10 USC 374, or transporting LEA personnel in DOD aircraft to conduct initial detection and reporting of cultivation sites consistent with guidance provided in CJCSI 3710.01 series.

CD-related hostility/hostile action – Belligerent or violent confrontation or conflict resulting from illicit drug activities/trafficking.

designated drug interdiction area – Includes the land and sea areas in which, as determined by the Secretary of Defense, the smuggling of drugs into the United States occurs or is believed to have occurred.

deadly force – Force likely to cause death or serious physical injury.

imminent – All available facts indicate that a CD activity or CD-related hostile action is about to occur. The determination of whether a particular threat or danger is "imminent" is based on an assessment of all the circumstances known to DOD personnel at the time. "Imminent" does not necessarily mean "immediate" or "instantaneous."

inherently dangerous property – Property that, in the hands of an unauthorized person, presents an imminent danger of death or serious bodily harm to others. Examples include high risk, portable, and lethal: missiles; rockets; arms; ammunition; explosives; chemical agents; and special nuclear materials.

¹ Terms and definitions listed are not standardized within DOD (Joint Pub 1-02) and are applicable only in the context of this document.

in the United States – This includes the land area, internal waters, territorial sea, and airspace of the 50 states of the United States, as well as that of US territories, possessions, and commonwealths.

law enforcement activities/functions – These activities include but are not limited to, searches, seizures, arrests, raids, interrogations, investigations, stop and frisks, or other similar activities. The word “search,” as used in this context, does not include conducting aerial reconnaissance or detection, monitoring, and communication of movement of surface traffic in accordance with 10 USC 374, or transporting LEA personnel in DOD aircraft to conduct initial detection and reporting of cultivation sites consistent with guidance provided in CJCSI 3710.01 series.

property vital to national security – Property designated by the NCA such as designated equipment and areas containing strategic operational assets, sensitive codes, or special access programs, or specifically designated equipment and property.

serious physical injury – Includes serious damage, such as deep cuts, torn members of the body, serious damage to internal organs, and other life-threatening injuries but would not include minor injuries, such as a black eye or a bloody nose; also known as “serious bodily harm.”

unit self-defense – As used in this instruction and in circumstances where no LEA personnel are available to respond in a timely and prompt manner, the use of force by DOD personnel during military operations that provide support to LEAs conducting CD operations in the United States in defending a particular US force element, including individual personnel thereof, and other US forces in the vicinity, from an imminent danger of death or serious physical injury.