

New Developments

Administrative & Civil Law

The Army Safety Program Update

The following Army regulation has been recently updated. The highlighted change does not necessarily address all the revisions made to this particular regulation. Attorneys should regularly consult the U.S. Army Publishing Directorate's website (<http://www.apd.army.mil>) for updates to Army publications, including regulations and pamphlets. All updated regulations feature a "Summary of Change" section that outlines pertinent revisions.

- AR 385-10, The Army Safety Program
RAR: 14 June 2010
Changes: Updates cost thresholds for accident severity classification and eliminates missiles from Class A accident criteria. A Class A accident is now defined as follows: "An Army accident in which the resulting total cost of property damage is \$2 million or more; an Army aircraft is destroyed, missing, or abandoned; or an injury and/or occupational illness results in a fatality or permanent total disability."¹

—Major Derek D. Brown, USA

Secretary of Defense Guidance on Don't Ask, Don't Tell Policy

In accordance with a recent directive issued by the Secretary of Defense to the Secretaries of the military departments,² the separation authority for homosexual conduct discharges in the Army is now the Secretary of the Army in coordination with the Under Secretary of Defense for Personnel and Readiness and the General Counsel of the Department of Defense. This change, which was announced in a memorandum from the Secretary of Defense dated 21 October 2010, affects the following regulations:

- AR 135-175, Officer Separations (28 Feb. 1987) (RAR, 27 Apr. 2010)
- AR 135-178, Enlisted Administrative Separations (12 Mar. 2007) (RAR, 27 Apr. 2010)
- AR 600-8-24, Officer Transfers and Discharges (12 Apr. 2006) (RAR, 27 Apr. 2010)

¹ U.S. DEP'T OF ARMY, REG. 385-10, THE ARMY SAFETY PROGRAM para. 3-4a (23 Aug. 2007) (RAR, 14 June 2010).

² Memorandum from Robert M. Gates, Sec'y of Def., to Sec'ys of the Military Dep'ts et al., subject: Title 10, U.S.C., § 654 (21 Oct. 2010) [hereinafter Gates Memo]; see also Memorandum from Clifford L. Stanley, Under Sec'y of Def. for Pers. & Readiness, to Sec'ys of the Military Dep'ts, subject: Don't Ask, Don't Tell Legal Developments (21 Oct. 2010).

- AR 635-200, Active Duty Enlisted Administrative Separations (6 June 2010) (RAR, 27 Apr. 2010)

According to the memorandum, the directive was issued "[i]n light of the legal uncertainty that currently exists surrounding the Don't Ask, Don't Tell law and policy" and was influenced in part by the U.S. District Court for the Central District of California's injunction in *Log Cabin Republicans v. United States*, No. 10-56634, 2010 U.S. App. LEXIS 21651 (C.D. Cal. Oct. 20, 2010).³

—Major Todd A. Messinger, USA

Center for Law & Military Operations

CLAMO Publishes New *Tip of the Spear*⁴ and *Domestic Operational Law Handbook*⁵

The Center for Law and Military Operations (CLAMO) has recently published the latest version of *Tip of the Spear*, which is now available online at CLAMO's website.⁶ This publication is the latest supplement to *Forged in the Fire: Legal Lessons Learned During Military Operations*, which CLAMO published in 2008 as a compilation of enduring lessons learned in military operations from 1994 to 2008. *Forged in the Fire* gathered all available lessons in key operational disciplines across the legal spectrum and placed them under easily referenced headings that judge advocates could quickly search, read, and digest.

With the ever-changing operational environments of the conflicts in Iraq and Afghanistan, as well as Operation Unified Response in Haiti, CLAMO recognized the need to disseminate the most recent guidance from judge advocates who advised leaders at the forefront of these operations. *Tip of the Spear* collects all CLAMO After Action Reports (AAR) completed since August 2009. It is CLAMO's intent to produce timely *Tip of the Spear* updates to *Forged in the Fire* to supplement enduring lessons learned with the most current AAR data.

The format of *Tip of the Spear* presents individual unit AAR comments in "IDR" format: issue, discussion, and recommendation. The majority of IDRs pertain to

³ Gates Memo, *supra* note 2.

⁴ CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., TIP OF THE SPEAR: AFTER ACTION REPORTS FROM AUGUST 2009—AUGUST 2010 (2010) [hereinafter TIP OF THE SPEAR].

⁵ CTR. FOR LAW & MILITARY OPERATIONS, THE JUDGE ADVOCATE GEN.'S LEGAL CTR. & SCH., DOMESTIC OPERATIONAL LAW HANDBOOK FOR JUDGE ADVOCATES (2010) [hereinafter DOPLAW HANDBOOK].

⁶ Publications, CTR. FOR LAW & MILITARY OPERATIONS, <https://www.jagcnet2.army.mil/8525751D00557EFF/0/A86D78669E17E6F9852574DA005E3ADF?opendocument> (follow "Tip of the Spear" hyperlink).

operations in Afghanistan and Iraq, but other operations are also represented, such as Kosovo and Haiti. The observations reported are those of the legal personnel who deployed with the designated units. Their comments are presented unfiltered and are organized by area of operations and by the command in which the individual served. The IDRs do not necessarily represent the views of CLAMO or The Judge Advocate General's Corps, or have the full endorsement of the leadership of each individual commentator's organization. They simply record observations gathered through the AAR process in a transparent and unedited format for possible use by deployed judge advocates as appropriate.

The Center for Law and Military Operations has also published the latest *Domestic Operational Law Handbook for Judge Advocates (DOPLAW Handbook)*, which is also available online at CLAMO's website.⁷ The new *DOPLAW Handbook* is in its tenth edition and has been updated to include the latest information from practitioners in the field and descriptions of recent developments in law and policy relating to domestic military operations and emergency response operations.

The *DOPLAW Handbook* is designed to serve as an educational tool to assist judge advocates and paralegals involved in domestic military operations, including support to civil authorities and law enforcement, civil disturbance operations, military support to special events, disaster and emergency assistance, and related topics.⁸ Written primarily for judge advocates, the handbook is a "compilation of comprehensive legal authorities, effectively presented in a format that very knowledgeably describes the reality of DOD's war fighting and civil support missions. In short, it is the starting point for any competent lawyer's professional understanding of the . . . [current] threat environment . . ."⁹

The revised handbook's content should be familiar to readers of earlier editions. Each chapter has been updated to

reflect new developments in law and policy since the handbook was last published in November 2009. The handbook begins with a thorough overview of core authorities for Department of Defense (DoD) support to domestic operations and a comprehensive outline of the National Response Framework and other federal authorities and policies governing domestic operations. The handbook features chapters on DoD's role in chemical, biological, radiological, and nuclear (CBRNE) response; DoD support to civil authorities (DSCA); counterdrug operations; support to domestic emergency and disaster operations (with extensive discussions of the Stafford Act and related authorities); use of force in domestic operations; and intelligence and information operations, among other subjects. The *DOPLAW Handbook* also provides detailed guidance regarding interagency relationships in domestic operations with other federal and state agencies and describes the unique roles of Reserve and National Guard forces in domestic operations. The final chapter of the handbook thoroughly explores issues of fiscal and contract law in domestic operations.

As the Editor's Note explains, "[t]he Handbook is not a substitute for complete references" and "judge advocates advising in this area of law should monitor developments in this area closely as the landscape continues to evolve."¹⁰ Nevertheless, the *DOPLAW Handbook* represents a critical starting point and guide for practitioners engaged in any domestic operations mission.

To obtain hard copies of these publications for your office, please e-mail CLAMO at clamo@conus.army.mil.

—Major Albert Troisfontaines, Canadian Forces
—Lieutenant Commander Brian Robinson, USCG

⁷ Publications, CTR. FOR LAW & MILITARY OPERATIONS, <https://www.jagcnet2.army.mil/8525751D00557EFF/0/A86D78669E17E6F9852574DA005E3ADF?opendocument> (follow "2010 DOPLAW Handbook" hyperlink).

⁸ DOPLAW HANDBOOK, *supra* note 5.

⁹ *Id.* preface, at iv. Paul McHale, former Assistant Secretary of Defense for Homeland Defense and Americas' Security Affairs, wrote the preface.

¹⁰ *Id.* Editor's Note. Readers should be mindful that Field Manual 3-28, *Civil Support Operations*, and other core policy documents, including Department of Defense Directive (DoDD) 5525.5, DoD 3025.1, and DoDD 3025.15, are in the process of final approval and will be addressed in the next edition of the DOPLAW Handbook.