Appendix C - Authorities and References

Assistance to States in Maintaining Order

Emergency Federal Law Enforcement Assistance Act. Upon written request by a Governor, the Attorney General can coordinate and deploy emergency Federal law enforcement assistance to State and local law enforcement authorities (42 U.S.C. § 10501). Federal law enforcement agencies that are authorized to provide assistance to State and local government officials by enforcing State and local law should be duly deputized to do so under State and local statutes.

Robert T. Stafford Disaster Relief and Emergency Assistance Act. In disaster and emergency situations, this Act authorizes Federal agencies to assist in the provision of State and local public health measures, including by providing logistical or materials support to State and local law enforcement (42 U.S.C. §§ 5170, 5192-5193, 5195a). The Act also authorizes DHS/FEMA to “procure by condemnation or otherwise, construct, lease, transport, store, maintain, renovate, or distribute materials and facilities for emergency preparedness,” (emphasis added). The term “materials” includes “raw materials, supplies, medicines, equipment, component parts, and technical information and processes necessary for emergency preparedness,” (id. § 5195a(5)); the term “facilities” includes “buildings, shelters, utilities, and land,” (id. § 5195(a)(6)). The term “emergency preparedness” includes measures to be undertaken in preparation for anticipated hazards, during a hazard, or following a hazard. An influenza pandemic would fit within the broad definition of “hazard” (see, id. § 5195(a)(1), 5195(a)(3)).

The Insurrection Act, 10 U.S.C. §§ 331-335. The President may, upon request of a State legislature, or the Governor when the legislature cannot be convened, send the Armed Forces as necessary to suppress an insurrection against State authority (id. at § 331). Ordinarily requests under this provision specify that the violence cannot be brought under control by State and local law enforcement agencies and the State National Guard troops. In addition, the President may use the Armed Forces or the federalized National Guard as he considers it necessary to suppress any insurrection, domestic violence, unlawful combination, or conspiracy if it (1) so hinders the execution of State and Federal law that people are deprived of their rights secured by the Constitution and laws, or (2) opposes or obstructs the execution of Federal law (id. at § 333). The President may also use the Armed Forces of the federalized National Guard to enforce Federal law (id. at 332). This statutory authority is an exception to the Posse Comitatus Act, 18 U.S.C. § 1385 (2002), authorizing the military to make arrests, conduct searches, and perform other traditional law enforcement functions.

Under the Insurrection Act, the President may use the National Guard (when called into Federal service), reserves (when called to active duty), and members of the Armed Forces to enforce Federal laws or to suppress the insurrection. DOD has an established protocol, the Commander, U.S. Joint Forces Command Civil Disturbance Plan (“Garden Plot”). Under this plan, the Attorney General is responsible for receiving and coordinating requests for military assistance. The military on-scene commander acts in coordination with the Senior Civilian Representative of the Attorney General, most likely the U.S. Attorney in the given area.

Military Support for Civilian Law Enforcement Agencies. The Secretary of Defense may, in accordance with other applicable law, make available any equipment (including associated supplies or spare parts), base facility, or research facility of the DOD to any Federal, State, or local civilian law enforcement official for law enforcement purposes (10 U.S.C. § 372(a)). Training and personnel to maintain and operate equipment may also be provided (10 U.S.C. §§ 373-4).
Enforcement of Quarantines

State and local Quarantines. State and local officials draw their authority to enforce State and local quarantines from State and local law. Under section 311 of the PHSA, 42 U.S.C. § 243(a), the Secretary of Health and Human Services is authorized to accept State and local authorities’ assistance in the enforcement of Federal quarantine rules and regulations, and is required to assist State and local authorities in the enforcement of their quarantines and other health regulations.

The U.S. Coast Guard, and “military officers commanding in any fort or station upon the seacoast,” as well as Customs officers, which may include Customs and Border Protection officers and Immigration and Customs Enforcement special agents, must, at the direction of the Secretary of Health and Human Services, aid in the execution of such State quarantines and other health laws “according to their respective powers and within their respective precincts” (42 U.S.C. § 97).

The President also could use the Insurrection Act (see above) and use the Armed Forces or federalized National Guard to help suppress violence arising out of a State quarantine, as for any other law enforcement activity permitted under the Insurrection Act, 10 U.S.C. §§ 331-335, provided the requirements for using the Act described above are met (e.g., if the President is asked by a State to assist and if the defiance to the State quarantine orders amounts to an insurrection against State authority that the State cannot handle (see 10 U.S.C. § 331), or there is widespread unlawful activity that has the effect of depriving people of rights secured by the Constitution and laws) (see 10 U.S.C. § 333).

Federal Quarantines. Customs officers, which may include Customs and Border Protection officers and Immigration and Customs Enforcement special agents, and the U.S. Coast Guard have specific authority and responsibility to assist with the enforcement of quarantines at ports of entry (42 U.S.C. § 268). With regard to other Federal law enforcement officers, the United States Marshals Service has the broadest of Federal law enforcement missions, 28 U.S.C. § 565; and, along with other Department of Justice agencies (FBI, DEA, ATF) can be directed by the Attorney General to enforce quarantines. The U.S. Marshals Service can also deputize other Federal law enforcement officers throughout the executive branch to give them law enforcement powers in circumstances that extend beyond those for which they are otherwise statutorily authorized to exercise them, as was done during Hurricane Katrina.

Under the Insurrection Act the President may direct the military to enforce quarantines, or conduct security functions such as guarding stockpiles and pharmaceuticals, when he finds it necessary to enforce Federal law (see 10 U.S.C. §§ 332-334), or other prerequisites for use of the Act described above are met.

Criminal Sanctions. The violation of Federal quarantine regulations is a crime punishable by a fine of not more $1,000 or by imprisonment for not more than 1 year, or both (42 U.S.C. § 271). Additionally, individuals may be fined up to $250,000 if a violation of the regulation results in death, or up to $100,000 if a violation of the regulation does not result in death (18 U.S.C. §§ 3559, 3571(c)).
Chapter 9 - Institutions: Protecting Personnel and Ensuring Continuity of Operations

The Occupational Safety and Health Act of 1970 authorizes the Secretary of Labor to promote the safety and health of America's workers by setting and enforcing standards; providing training, outreach, and education; and establishing partnerships. The Occupational Safety and Health Administration has promulgated several standards to protect workers that would be particularly important in the event of a pandemic influenza outbreak. These standards include, but are not limited to: 29 CFR 1910.120 (Hazardous Waste Operations and Emergency Response), 29 CFR 1910.132 (Personal Protective Equipment), 29 CFR 1910.134 (Respiratory Protection), and 29 CFR 1910.1030 (Bloodborne Pathogens).