

**LEGAL**

1. GENERAL. A nuclear weapon accident or incident presents complex legal problems for the DoD IC. Legal issues range from questions on jurisdiction and authority to exclude the general public from specific areas, to paying simple personal property claims. The response force organization should include a legal element to advise and assist the DoD IC in resolving these issues. During a DoD-led response, the senior military member of the legal element responding with the staff of the DoD IC is the DoD PLA. During a DOE/NNSA-led response, the PLA is the Legal Advisor from the DOE/NNSA Service Center that deploys with the SEO.

2. SPECIFIC REQUIREMENTS. The PLA shall:

a. Advise the DoD IC and functional staff elements on any legal matters related to the accident or incident. Advise the DoD IC on authority for establishing jurisdiction and authority for establishing an NDA in accordance with DoD Directive 5210.63 (reference (be)) and section 797 of Security Regulations and Orders, Penalty for Violation (reference (bf)).

b. Organize and supervise the legal functional element at the accident or incident site, including facilitating a claims processing facility.

c. Ensure that the claims processing facility is accessible to the public and mutually agreeable to local officials. As soon as the claims processing facility is established, the JIC will be provided information on the location for inclusion in a news release.

d. Coordinate technical legal matters with a higher authority, when required.

e. Coordinate legal issues with the PLAs of other participating departments or agencies, the Combatant Commanders, and DoD General Counsel as required.

f. Provide legal advice and assistance to other Federal officials, on request.

g. Review operational plans to identify potential legal problems and ensure that they are legally sufficient, with emphasis on security, radiological safety, environmental law, and the preservation and/or documentation of evidence for use in any resulting criminal prosecutions, resolving claims or other litigation.

h. Ensure that all legal personnel work closely with the PIO to ensure no hidden legal implication will impact response efforts. Additionally, all press releases and media guidance should be reviewed for accuracy and legal sufficiency. Finally, the PLA and his staff should work with the PIO to prepare the DoD IC and his staff for press conferences.

i. Coordinate on the RUF and the Rules of Engagement, as necessary, outside the territory of the United States before finalization.

j. Ensure compliance with and adherence to HIPAA, CERCLA, and Freedom of Information Act (FOIA).

### 3. RESOURCES

a. Providing timely and sound legal advice and assistance depends on adequate personnel and communication among functional elements. The designated legal element of the DoD IC's staff should include at least two attorneys and one legal clerk available for 24-hour operations in support of the ICP. Depending on the nature of, and circumstances surrounding an accident or incident, additional personnel may be required. Pre-designated response forces should ensure that the assigned legal element is aware and capable of addressing the complex and politically sensitive national defense issues that evolve from a nuclear weapon accident or incident, as well as managing and administering a claims processing facility.

b. Other Interagencies may include a legal advisor as an element of their response force. To assure consistency, all legal advice and assistance should be coordinated jointly with these other legal advisors.

c. The General Council, DTRA, is a member of the CMAT and will deploy to the accident or incident site to advise and assist the PLA.

### 4. CONCEPT OF OPERATIONS

This concept of operations establishes guidelines for the operation of the PLA and his or her staff. Circumstances surrounding an accident or incident are the driving force of the sequential order.

a. Planning. The PLA must be knowledgeable about the authority and responsibility of the Department of Defense and DOE/NNSA, as well as that of the various other Federal departments and agencies in a nuclear weapon accident or incident. Inherent in this event are the relationships between international, Federal, State, and local authorities, as well as jurisdictional principles, security requirements, environmental requirements, and claims administration. Since requests for legal advice require immediate response, and adequate research facilities are unlikely to be available on-site, designated legal elements should prepare a handbook of references, including those listed in the reference page. These references provide the authority and some background for subject areas, such as establishing the NDA, law enforcement, use of force, evacuation of civilians, and damage to public or private property. The handbook should be tailored to the respective Service or agency.

b. Initial Actions.

(1) The DoD IC and staff must have immediate access to the PLA; accordingly, the legal element should be located in or near the ICP.

(2) Providing timely and legally sound advice and assistance is mostly based on communication; therefore, liaison must be established with all the major functional elements of the DoD IC's staff to make all elements aware of the need for coordination of planned actions.

(3) Maintain a prioritized list of planned actions and events and a record of completed actions. A copy of this record will be provided to the Documentation Unit of the Planning Section.

(4) The claims processing facility should be established at a location easily accessible to the public and mutually agreeable to local officials. Depending on circumstances, more than one claims facility may be required. The claims processing facility should be collocated with the civil emergency relief and assistance office, when possible. As soon as the claims processing facility is established, the JIC will be provided information on the location for inclusion in a news release.

(5) Claims processing personnel will be aware of the sensitive nature surrounding the accident or incident. The PLA ensures that any information provided to claimants is according to established policies, and that query for any information other than claims procedures are referred to the PIO.

(6) Response efforts may necessarily result in the disturbance and/or destruction of physical evidence that may later prove to be significant in resolving claims, criminal prosecution, or other litigation. Accordingly, the PLA should take immediate action to ensure factual and evidentiary information is preserved for both safety and/or criminal investigations, as well as claims resolution. This includes photographs and/or videos, interviews with witnesses, documentation of radiological hazards and safety procedures, identification of responding forces and civilians at or near the accident or incident scene, and appropriate recording and receipting of property.

(7) The PLA must identify and establish liaison immediately with local law enforcement officials, legal authorities, and State and local emergency response organizations.

(8) To ensure that legal advice is timely, responsive, and consistent, the PLA should establish liaison with legal advisors representing other Federal Agencies at the accident or incident site.

c. Follow-On Actions. The PLA, or a representative, stays at the scene until the response operation is complete. The PLA advises the DoD IC until the claims processing facility stops operations.

d. Public Affairs. Adverse publicity is inherent to a nuclear weapon accident or incident simply by its occurrence. Mishandling of public affairs may impact claims and litigation, result in a loss of confidence by the public in the actions of the USG in the cleanup process, or have long-term political and financial implications that might undermine support for the nation's nuclear deterrent capability. It is therefore essential that:

(1) Legal personnel work closely with the PIO to ensure that no hidden legal implications impact response efforts.

(2) All personnel involved in the response effort must refer all media and public queries for information to the PIO.

(3) Legal personnel coordinate with the PIO to review proposed public statements and media guidance for legal sufficiency and implications.

(4) Legal personnel should work with the PIO to prepare the DoD IC and his staff for press conferences.