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NGAK-TAG

August 23, 2015

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Rules for the Use of Force

1. Purpose. To provide information on the Rules for the Use of Force (RUF) for Alaska National Guard (AKNG) forces performing Defense Support of Civil Authorities (DSCA) operations within the United States.

2. References.

- a. Alaska Statutes, Title 26: Alaska Military Code
- b. AS 11.81.330 Justification: Use of Nondeadly Force in Defense of Self
- c. AS 11.81.335 Justification: Use of Deadly Force in Defense of Self
- d. AS 11.81.340 Justification: Use of Force in Defense of a Third Person
- e. AS 11.81.350 Justification: Use of Force in Defense of Property and Premises
- f. AS 11.81.370 Justification: Use of Force by a Peace Officer in Making an Arrest or Terminating an Escape
- g. AS 11.81.400 Justification: Use of Force in Resisting or Interfering with Arrest
- h. National Guard Regulation (NGR) 500-5/ANGI 10-208

3. Definitions: (as defined by Alaska State Statute)

a. Dangerous Instrument "...means any deadly weapon or anything that, under the circumstances in which it is used, attempted to be used, or threatened to be used, is capable of causing death or serious physical injury..." (AS 11.81.900 (b))

b. Deadly Force "...means force which the person uses with the intent of causing, or uses under circumstances that the person knows create a substantial risk of causing, death or serious physical injury; —deadly force includes intentionally discharging or pointing a firearm in the direction of another person or in the direction in which another person is believed to be and intentionally placing another person in fear of imminent serious physical injury by means of a dangerous instrument..." (AS 11.81.900 (b))

c. Deadly Weapon "...means any firearm, or anything designed for and capable of causing death or serious physical injury, including a knife, an axe, a club, metal knuckles or an explosive..." (AS 11.81.900 (b))

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d. Force "...means any bodily impact, restraint, or confinement or the threat of imminent bodily impact, restraint, or confinement, force" includes deadly and nondeadly force..." (AS 11.81.900 (b))

e. Nondeadly Force "...means force other than deadly force..." (AS 11.81.900 (b))

f. Physical Injury "...means a physical pain or an impairment of physical condition.." (AS 11.81.900 (b))

g. Serious Physical Injury "...means (A) physical injury caused by an act performed under circumstances that create a substantial risk of death; or (B) physical injury that causes serious and protracted disfigurement, protracted impairment of health, protracted loss or impairment of the function of a body member or organ, or that unlawfully terminates a pregnancy..." (AS 11.81.900 (b))

4. Applicability. This RUF, unless otherwise directed by TAG-AK or her designated representative, will remain in effect for service members (SM) of the AKNG when ordered to duty by the Governor in a Title 32 (T32) or State Active Duty (SAD) status.

5. Policy. All military personnel who are provided the capability and/or authorized to use force in the performance of their duties will be briefed on and provided a written copy of the RUF before being given or authorized to use any firearm, lethal, nonlethal, or other deadly weapon in the performance of their military duties subject to the provisions of this RUF. In the event of modification/changes to the RUF by order of TAG (or other lawfully and duly delegated authority) each affected SM will then be instructed in the modified RUF.

a. Standard Operating Procedure (SOP) for Alaska National Guard service members, when in SAD or T32 status for the purpose of performing duties during a law enforcement, law enforcement support, or in relation to a civil disturbance, shall accomplish their duties in a manner that minimizes the need for force and maximizes voluntary compliance.

(1) If force is applied, service members (SM) shall use only that level of control which is reasonably necessary and lawful in executing their duties.

(2) When possible, SMs should attempt to gain compliance by means of verbal directives or commands.

(3) No SM of the Alaska National Guard shall engage in any conduct that could reasonably be expected to cause an unnecessary escalation of violence.

b. Justification for any level of control is limited to what reasonably appears to be the facts known or perceived by the SM at the time. Facts unknown by the SM at that time cannot be used at a later time for justification.

6. Self-defense, Defense of Others. Nothing in these rules shall limit an individual's inherent right of self-defense, or a commander's inherent duty to safeguard his or her forces. The right to use force in self-defense or in defense of others, however, is limited under law to using the minimum force necessary, proportional to the threat, in self-defense or defense of others.

7. Procedure. The AKNG, is a federally-recognized state government entity when commanded by state authorities and performing their duties in T32 or SAD status. The laws that form the basis for the AKNG RUF are Alaska State laws. The rules contained in this RUF do not include the rules of engagement, which generally do not apply to the National Guard or its members when performing domestic operations, to include support to law enforcement agencies. The AKNG will follow the RUF when performing domestic operations, such as response to natural disasters, providing security during civil disturbances, assistance to civil authorities in conducting law enforcement operations, and law enforcement support operations. AKNG SOP authorizes SMs to respond to resistance by using only that level of control which is reasonably necessary and lawful in the performance of the mission. SMs are not required to use force if a reasonable, safe and practical alternative can be found. If SMs must use force in any situation the Resistance Control Continuum will be utilized in conjunction with the AKNG RUF.

8. Resistance Control Continuum. The Resistance Control Continuum is divided into two distinct categories: Levels of Resistance, describing resistive behavior by a subject, and levels of Control, detailing a SMs methods of controlling the subject. The following Levels of Resistance are recognized by the AKNG.

a. Levels of Resistance.

(1) Psychological intimidation: Resistance that is indicated by nonverbal cues given by a subject. These cues indicate the subject's attitude, physical readiness and potential physical resistance.

(2) Verbal Non-Compliance: Verbal Non-Compliance is any verbal response indicating a subject's unwillingness to comply with lawful command.

(3) Passive Resistance: Any type of resistance where the subject does not try to defeat the SM's attempt to touch or control the subject, but will not voluntarily comply with verbal or physical attempts to control.

(4) Defensive Resistance: Any action by a subject that attempts to prevent an SM from gaining control. It is not an attack on the SM but a physical act designed to prevent the officer from gaining control.

(5) Active Aggression: Active Aggression includes physical actions/assaults against the SM or another person with less than deadly force.

(6) Deadly Force Assault: Force used against a SM and/or another person that may result in serious physical injury or the loss of human life.

b. Levels of Control. It is important for SMs to understand that they do not have to increase their level of control in a step by step or sequential progression. A subject's resistance can begin anywhere on the continuum with each incident containing its own specific factors. The SMs responses can begin at any point on the continuum that represents an "objectively reasonable" response. The Alaska National Guard understands and recognizes that individual SMs may have a different response to the same situation based upon the totality of circumstances (e.g., relative size/stature of the SM/subject, the subject's actions, and relative capabilities of the subject and SM). The following are the levels of Control that are recognized by the AKNG:

(1) Service Member Presence: This is a combination of symbols and items which identifies a person as a SM of the AKNG. Examples of a symbol or item which identifies a person as a SM are badges, military specific patches, military insignia, military vehicle, uniform and/or verbal identification.

(2) Verbal Direction: The articulation of a SMs lawful commands of direction or detention.

(3) Soft Empty Hand Control: Soft Empty Hand Control techniques are those tactics utilized when a SM has to physically take control of a subject. They are designed to control low levels of resistance. These techniques have low risk for injury.

(4) Hard Empty Hand Control: Hard Empty Hand Control techniques are also tactics utilized when a SM has to physically take control of a subject. They are designed to control Active Aggression and high levels of resistance when lower levels of control have failed or the SM reasonably believes lower levels of control will not be effective. Hard Empty Hand Control techniques have a moderate to high risk for injury.

(5) Intermediate Weapons: The application of any tool that is not part of the human body to control resistance or Active Aggression. Intermediate Weapon Control is justified when lower forms of control have failed or the SM believes that lower level control techniques will not be effective and deadly force is not authorized. Intermediate weapons have the ability to temporary incapacitate a subject when used. Targeting the head, neck or spine with impact weapons is generally considered deadly force.

(6) Deadly Force: Deadly force is a last resort, and is justified by extreme necessity and when all other lesser means of force have been exhausted or are unavailable. Its use should not significantly increase the risk of death or serious bodily harm to innocent bystanders/party. Deadly force may be used:

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(a) In defense of the SM or another when the SM has reason to believe there is imminent danger of death or serious physical injury and all alternative means of force have been used or are not feasible; or

(b) To take into temporary custody, to prevent or terminate the escape or attempted escape from custody of a subject who is threatening to kill or to inflict serious physical injury on another unless detained without delay; or

(c) To take into temporary custody, to prevent or terminate the escape or attempted escape from custody of a subject that the SM reasonably believes possesses a firearm and who intends to kill or to inflict serious physical injury on another unless detained without delay.

(d) IF NO DEADLY THREAT IS PRESENTED AGAINST YOU OR ANOTHER SM, OR ANY INNOCENT BYSTANDER/PARTY, YOU MAY **NOT** USE DEADLY FORCE **REMEMBER DEADLY FORCE IS A LAST RESORT.**

(e.) In circumstances where deadly force is authorized, necessary and there is no alternative to discharging an issued firearm, "warning shots" are not authorized.

9. Weapons. This RUF encompasses response to resistance generally, while a Weapons policy will provide specific guidance regarding firearms, batons, electric control devices (ECD), and oleoresin capsaicin (OC) spray (otherwise considered nonlethal weapons) if the mission requires their use. These rules, policies and orders apply to any response to resistance or level of control involving weapons.

10. Arming Order. TAG or her designated representative is the approval authority for Arming Orders. Authority may be delegated to the local or on-scene commander to establish the Arming Order level when circumstances do not permit coordinating approval thru TAG or her designated representative. Arming Order levels should be determined by the exercise of informed judgment and proper evaluation of environment, current situation and all other appropriate surrounding circumstances, such as, the type of mission or function being performed by the various AKNG elements. When the mission requires that SM, in the AKNG be armed with any weapon system either lethal or non-lethal, unit leaders will utilize this arming order in conjunction with weapons status. The arming order and weapons status together are used to specify how SMs will posture their weapons, and other equipment while executing their mission. Arming orders should not be confused with the authority to use force once a member is faced with a threat. The following are standing Arming Orders for the AKNG:

a. AO-1: Rifle / Shot gun is at port arms on a sling with the pistol in its holster. Both weapons are on safe. Batons are ringed on duty belt, OC spray is on duty belt, and Tasers are in holsters with safety on.

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b. AO-2: Rifle / Shot gun is at port arms on a sling with the pistol in its holster. Both weapons are on safe. Batons are in hand at the ready position, OC spray is on duty belt, and Tasers are in holsters with safety on.

c. AO-3: Rifle / Shot gun is at port arms on a sling with the pistol in its holster. Both weapons are on safe. Batons are ringed on duty belt, OC spray is in hand ready to deploy. Taser is in holster with safety on.

d. AO-4: Rifle / Shot gun is at port arms on a sling with the pistol in its holster. Both weapons are on safe. Batons are ringed on duty belt, OC spray is on duty belt, and Tasers are in hand ready to deploy.

e. AO-5: Rifle / Shot gun is at the low ready with the pistol in its holster. Both weapons are on safe. Batons are ringed on duty belt, OC spray is on duty belt, and Tasers are in holsters with safety on.

11. Weapons Status. When the mission requires that SM in the AKNG be armed with lethal weapons, a weapons status will be managed and maintained at all times based on the mission and threat level. Weapon status for lethal weapons is clear guidance on how the weapon should be postured during the mission and should be changed as the tactical situation escalates or deescalates. Leaders will ensure that all soldiers are at the correct weapon status level at all times.

a. WS Green: All weapons are on safe with the chambers clear and no magazine in the magazine well. All ammunition is properly loaded into a magazine and stored in a designated carry pouch.

b. WS Amber: All weapons are on safe with the chambers clear and a magazine is inserted into the magazine well. All other ammunition is properly loaded into a magazine and stored in a designated carry pouch.

c. WS Red: All weapons are on safe with the chambers charged and a magazine inserted into the magazine well. All other ammunition is properly loaded into a magazine and stored in a designated carry pouch.

12. Reports and notifications. Any time a SM uses any of the Levels of Control beyond Verbal Direction (i.e. Soft Empty Hand Control, Hard Empty Hand Control, Intermediate Weapons or Deadly Force), that response to resistance shall be reported immediately using the SITREP format, followed by an SIR report with supporting documentation, that will include sworn statements, a response to resistance form filled out by the on-scene supervisor. All of which will be submitted as soon as reasonably possible. Units and individuals will follow the Deadly Force SOP for reporting requirements of any incident where a SM uses deadly force.

13. Suspects or prisoners detained by Alaska National Guard. In the event it becomes necessary for a AKNG SM to detain an individual, it must be based on necessity to

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either prevent, minimize, or stop an intentional or criminal interference with the performance of the AKNG military support mission or operations; or when requested by law enforcement officials to provide assistance with; or when expressly authorized. As soon as circumstances permit, persons arrested or detained by AKNG SMs will be transferred to the appropriate law enforcement officials.

a. During custody: Detained suspects or prisoners shall be treated in a fair and humane manner at all times. They shall not be subject to physical force other than as may be required to subdue violence or assure detention. No SM shall strike a prisoner or suspect, except when necessary in the prevention of an escape or in self-defense, or in prevention of violence to another person. (Deadly force may not be used solely to prevent an escape or attempted escape. Deadly force may be used only in circumstances described in paragraph 8.b(6). While a person is under arrest or being detained by an AKNG SM, search and seizure of any property must be properly documented and maintained for the immediate turn-over to the proper law enforcement officials.

b. Safeguarding suspects and prisoners. SMs shall be cautious in the detention of suspects or prisoners and shall take all necessary precautions to prevent an escape or damage to property. SMs shall take necessary steps to determine that all prisoners are not in possession of weapons or dangerous instruments.

14. Use of force during crowd management and crowd control: When in a crowd control situation, SMs will utilize their baton as a pushing instrument or impact weapon consistent with their training in crowd management for individuals who exhibit unlawful or hostile behavior and who do not respond to verbal direction from local police or the AKNG. When time permits and the incident or tactical situation is resolved, the SM performing crowd control duty will provide an incident report on the number of times a baton was used. The reporting will be done on a sworn statement form through the Provost Marshal (PM) as soon as reasonably possible. The PM will review the final report and consult with the servicing Judge Advocate (JA) and the District Attorney's Office to ensure no further action is needed. The PM will brief the task force commander on the totality of the incident and provide him or her with all necessary documentation as needed. At a minimum the final report to the task force commander shall include, but is not limited to, the following,

- a. The events precipitating the use of crowd control tactics.
- b. Justifications for the use of crowd control tactics.
- c. Warning and or advisements given to the crowd.
- d. Avenues of escapes provided.
- e. Methods used during the incident.

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f. Approximate number of baton applications by each service member.

15. Modification/Changes to the RUF. These Rules for the Use of Force shall not be changed except upon order of The Adjutant General. Requests for changes/modification to these rules shall be sent through the appropriate chain of command for review and approval by The Adjutant General.

16. The POC for this memorandum is the Provost Marshal, MAJ Brian Fuchs at (907) 428-6417 or brian.r.fuchs.mil@mail.mil.


LAUREL J. HUMMEL
Brigadier General (Alaska), AKNG
The Adjutant General

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