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November 23, 2010

TO ALL GOVERNORS:

As members of the Council of Governors (Council), we are writing to update you on our efforts to negotiate a Joint Action Plan for Developing Unity of Effort (Joint Action Plan) for federal and state military response to disasters and request your review and support for the latest plan.

During the Council’s November 8 meeting with the Departments of Defense and Homeland Security, we raised the concerns several of you brought to us regarding the first draft Joint Action Plan. As a result of those discussions, the Joint Action Plan was revised to further underscore and protect the authorities of governors to direct military responders during emergencies in their states.

Specifically, the Joint Action Plan now includes language similar to the agreed-to Statement of Principles clarifying that the governor and his/her designated National Guard dual-status commander will almost always serve as the lead official when the situation warrants state and federal military response efforts:

“When an emergency event occurs in any area subject to the laws of any State, Territory or the District of Columbia (hereinafter a “State”), the Governor of the State affected will normally be the principal civil authority supported by the primary federal agency and its supporting federal entities and the Adjutant General of the State or his/her subordinate designee will be the principal military authority supported by a duly appointed Dual-Status commander acting in his or her State capacity.”

With governors recognized as the principal civil authority, this language specifies that the federal role in domestic emergencies is to support governors. This includes a preference for the “usual and customary” appointment of a dual status commander selected by the Governor, who will presumably be a member of their National Guard. The only exception to this is when the event is of predominant federal concern such as an emergency occurring solely within an area of exclusive federal jurisdiction like a federal military installation.

In addition, under existing federal law a dual status commander can only be appointed by affirmative action of both the President and the governor. 32 USC §315(a) and 32 USC §325(a)(2) explicitly require the consent of the governor. 32 USC §315 provides for a commissioned officer of the Regular Army or the Regular Air Force to be appointed as a dual status commander. Such consent can be granted or withheld in the sole and unrestricted exercise

of the governor's discretion as a state's commander-in-chief. A federal military officer is eligible for appointment as a dual status commander only if the governor voluntarily grants the officer a commission in that state's National Guard under 32 USC §315 and then consents to appointment of the officer as a dual status commander.

We would also like to highlight that the Joint Action Plan does not require a governor to use the dual status command arrangement, it simply aims to make it an effective tool a governor may utilize when state and federal military forces are involved in an emergency. The Joint Action Plan will expedite the further development of policies and procedures necessary to ensure that this command arrangement may be utilized quickly when requested by a governor. Currently, the gubernatorial and presidential actions necessary to appoint a dual-status commander are very time consuming, making the immediate use of this command arrangement extremely difficult for a no-notice event. The Joint Action plan paves the way for transitioning to a usual and customary practice capable of immediate execution at the option of the governor.

Some governors leaving office this year also expressed reluctance to sign off on the Joint Action Plan in deference to their successors. We strongly believe this issue is too important to the safety of our citizens to wait. Your experience in dealing with emergencies and the National Guard is critical to determining whether the Joint Action Plan addresses the concerns of the past and provides a framework for future process improvements.

Acceptance of the Joint Action Plan will in no way limit incoming governors' ability to lead an emergency response and utilize state and federal military assistance. In fact, if we are able to begin implementation of the dual-status command concept nationwide, we anticipate that each governor will develop a memorandum of agreement with our federal partners that they can customize, accept or decline as they see fit.

Attached please find the revised version of the Joint Action Plan along with a document discussing several frequently asked questions. If you have concerns regarding the latest draft Joint Action Plan, please contact Heather Hogsett at the National Governors Association at hhogsett@nga.org or (202)624-5360 no later than December 6.

The Council is prepared to accept the Joint Action Plan and continue to work toward more specific operational guidelines. We hope you will support the Joint Action Plan, which we believe will provide for greater state control during joint state-federal operations in each of our sovereign states.

Thank you for your support.

Sincerely,



Governor James H. Douglas, Co-Chair
Council of Governors
Vermont



Governor Christine O. Gregoire, Co-Chair
Council of Governors
Washington



Governor Janice K. Brewer
Arizona



Governor Martin O'Malley
Maryland



Governor Jay Nixon
Missouri



Governor Bev Perdue
North Carolina



Governor Brad Henry
Oklahoma



Governor Luis G. Fortuño
Puerto Rico



Governor M. Michael Rounds
South Dakota



Governor Bob McDonnell
Virginia

cc: Governors-elect

Enclosures: Frequently Asked Questions
 Joint Action Plan for Developing Unity of Effort