

MEMORANDUM OF UNDERSTANDING

between

THE DEPARTMENT OF THE INTERIOR

and

THE ILLINOIS NATIONAL GUARD

Article I. Purpose

This Memorandum of Understanding (MOU) prescribes the procedures and guidelines for cooperation and support between the Department of the Interior (DOI) and the Illinois National Guard (IL NG).

Article II. Authority

This support Agreement is entered into by the National Guard, pursuant to authority contained in National Guard Regulation 500-1 and Air National Guard Regulation 55-04. The Department of the Interior enters into this Agreement under 43 U.S.C. Section 1733, Authorizing the Secretary of the Interior to enforce...federal laws and regulations...relating to the public lands or resources.

Article III. Definitions

The term Department of the Interior (DOI) encompasses all subordinate bureaus, services, and offices to include the Bureau of Land Management, National Park Service, Bureau of Indian Affairs, Fish and Wildlife Service, Bureau of Reclamation, Bureau of Mines, Office of Surface Mining, United States Geological Survey, Minerals Management Service, and the Office of the Secretary.

The term Illinois National Guard includes the Illinois Army National Guard and the Illinois Air National Guard.

Article IV. Program

The Department of the Interior has the authority for drug law enforcement activities on the Public Lands under the Secretary's initiative on drugs. The National Guard has the authority to support these actions under National Guard Regulations.

The Department of the Interior manages 506 million acres, approximately 69% of the Federal lands in the United States, and it is within the context of this responsibility that drug law enforcement operations are conducted with other governmental agencies to effect economies, maximize efficiency, and promote the goal of drug-free public lands. Such actions are compatible with mandated and discretionary authorities provided by executive decision and Congressional authorizations.

Due to the roadless expanse of the public lands, aerial surveillance and aircraft support are the primary tools in interdicting and eradicating drugs. Because of the need for operational security in drug law enforcement missions, the use of Government owned/operated aircraft is essential and consistent with program requirements.

The National Guard is a reserve component of the armed forces. In a non-federalized status the National Guard is commanded by the Governor of their respective State and not subject to the provisions of the

Posse Comitatus Act. DOD/NGB policy pertaining to the use of National Guard resources in a support role are contained in National Guard Regulation and Air National Guard Regulation.

National Guard aviation support missions may include:

- (1) Transporting DOI personnel for the purpose of locating and interdicting illicit drug activities.
- (2) Transporting contraband in the custody of DOI law enforcement agents from the public and Indian lands.
- (3) Training flights to improve coordination and tactical capabilities of DOI and National Guard participants.
- (4) Aerial surveillance of known or suspected drug activities.

Article V. Procedures

The following are the procedures for requesting and using National Guard support to fight the "War on Drugs."

The National Guard role in counter drug operations without a request for support from law enforcement agencies.

The National Guard will not initiate counter drug operations without a request for support from law enforcement agencies.

(1) Responsibility and liability for actions on the part of personnel involved in counter-drug activities will be as follows.

a. Supported agencies will accept responsibility for personal injury, death, or property damage caused by their own personnel and equipment.

b. Liability for personal injury, death, or property damage caused by National Guard personnel in Title 32 status is governed by the Federal Tort Claims Act, and the National Guard Claims Act.

c. TAG Illinois National Guard accepts responsibility and liability for actions by National Guard personnel on State Active Duty as provided for by State law.

(2) National Guard counter-drug support is categorized into interdiction and eradication operations. SECDEF approves specific counter-drug operations to be performed by the National Guard. Approval may not always include appropriation funding for anti-drug operations.

a. Interdiction Operations include detection, surveillance, monitoring, and the transport (WITH LAW ENFORCEMENT AGENTS PRESENT) of illegal drugs. They also include any operation designed to halt/disrupt the illegal drug flow into and within the U.S.

b. Eradication Operations include the physical destruction of marijuana plants, maintaining surveillance of marijuana fields, transporting confiscated illegal drugs (WITH LAW ENFORCEMENT AGENTS PRESENT) as well as law enforcement personnel and aerial reconnaissance.

(3) Request Channels. Requests for Illinois National Guard Support for anti-drug operations has to be submitted within a time frame that allows the request to be incorporated into this States anti-drug plans. The following procedures need to be adhered to:

a. Formal requests for National Guard support from federal agencies can be channeled through that agency's headquarters in Washington, DC through Department of Defense (DOD) to National Guard Bureau, Military Support (NGB-MS). Locally, support can be requested through the Plans, Operations, and Military Support Office (OPMSO) (217-785-3577).

b. NGB-MS will coordinate with the Illinois National Guard POMSO for all DOD, Federal or other civil agency requests made directly to NGB.

c. These requests will be approved for inclusion into the States anti-drug support plans under the condition that requested state is able to support requested operations.

(4) Approval Criteria. TAG-IL POMSO will ensure state anti-drug support request meet the following criteria before forwarding plans to NGB-MS for approval.

a. Support request must originate from a law enforcement agency. TAG-IL POMSO will retain original request or memorandum signed by the requesting agency.

b. Requested support will not interfere with scheduled training and will be compatible with the unit mission whenever practical.

c. Incidental to training support will be used to the degree possible; modifications to pre-planned routes and locations will not interfere with the missions and scheduled training.

d. Contemplated training modifications will not encroach upon National Guard training or operational areas of other units/agencies without prior coordination.

e. Rules of Engagement will address personnel safety, force protection, aircraft and equipment safety, arming of personnel and the use of force, arrest powers (when applicable), rules of evidence, tort liability and pre-commitment briefings. (SEE ENCLOSURE 1, Rules of Engagement for further information).

f. National Guard commanders will retain final authority over flight and/or ground operations of National Guard aircraft and vehicles.

g. Weapons carried on board aircraft/vehicles will not have chambered rounds. Weapons/pyrotechnics will not be discharged from aircraft/vehicles.

(5) A complete list of SECDEF approved operations directed to the National Guard Bureau is contained in Enclosure 2. Specific missions approved by SECDEF and NGB for Illinois are listed in (6) below. National Guard operations may be performed if all three of the following exist.

a. Operations are included in the States Anti-Drug Support Operations Plan.

b. Operational support is requested by a law enforcement agency.

c. Operations are approved by SECDEF as listed in state plans.

(6) Operations approved by SECDEF for the State of Illinois at this time are operations #4, #5, #7, #8, #12, #16 as listed in (SEE ENCLOSURE 2).

(7) Operations in ENCLOSURE 2 that have not been approved for this years Illinois National Guard program are #14, #15, #17, #20, #23, #24. However, if these type operations are required DOI must request specific type operational support from IL-POMSO, who in turn will forward request to NGB-

MS for approval/disapproval. Operations #14, #15, exceed the Illinois Guards capability. However, if required, this type support could possibly be coordinated with another Guard state. DOI should review all missions in Enclosure 2 for possible inclusion in next years plan.

(8) Use of Aircraft

a. Civilian personnel (governmental, law enforcement, media, etc.) may be transported in National Guard aircraft when a mission is conducted in state active duty status, with prior authorization. The state is liable to reimburse the federal government at the direct flying hour cost (POL & repair parts) for the actual use of that aircraft.

b. Air transportation of civilian law enforcement personnel on missions conducted incidental to training must be approved on a case-by-case basis unless previously included in Office of Secretary of Defense (OSD) approved state anti-drug support plans. Operations must be consistent with the participating unit(s)' military mission, and will be conducted within available resources including flying hours.

c. Civilian law enforcement officials may be transported in ARNG or ANG aircraft employed in support of an OSD approved, Congressionally funded, state anti-drug support operations plan.

(9) Uniform for Counter Drug Operations

a. Wear of appropriate duty uniform is standard for counter drug support operations. Adjutants General may authorize, on a case-by-case basis, the wear of civilian clothing or coveralls for certain operations.

b. If the requesting law enforcement agency desires National Guard personnel not to wear their National Guard uniforms while supporting counter-drug operations, it must be included in the request for support when forwarded to POMSO-IL.

(10) Public Affairs. Counter drug support can generate considerable news media interest, and though important for the public to be informed, safety/security concerns dictate restraint in publicizing Guard participation in counter-drug operations.

a. News media requests to accompany Guard members on anti-drug operations will be coordinated with the Adjutant General; ATTN: Plans, Operations, Military Support Office (POMSO) (217) 785-3577. Further coordination with the Adjutant General; ATTN: Public Affairs Office (PAO) (217) 785-3567 is required. Final approval will be given by the national Guard Bureau, Public Affairs (NGB-PA) and The Adjutant General-Illinois.

b. News releases will be the responsibility of the supported civil law enforcement agency and coordinated with NGB-PA prior to release.

c. Freedom of Information requests on anti-drug support operations will be coordinated through the National Guard Freedom of Information/Privacy Act Officer and referred to the Drug Enforcement Agency (DEA), U.S. Department of Justice.

(11) Reports. After action reports need to be forwarded to the POMSO NLT 5 days after each operation. These reports need to be in written form and contain the following information:

a. Seizure. Property seized in amounts, type, and value.

b. Eradication. Number of plants, value, and type (wild, cultivated, sinsemilla).

- c. Arrests. Number of personnel.
- d. Any problems, lessons learned, or recommendations for future operations.

(12) Special Notification. It is essential that all counter drug support be carefully coordinated to ensure both the effectiveness of the support provided and the integrity of policy.

(13) The DOI bureau requesting support will contact the Illinois Army National Guard Office of Plans, Operations, and Military Support Attn: LTC Norman E. Aschenbrenner for all activities to be conducted under this MOU. The Bureau person making these contacts should be the Bureau Chief Law Enforcement Officer.

(14) Notice of intended missions will be forwarded to the National Guard as far in advance as possible. DOI bureau law enforcement personnel will attempt to project anticipated support requirements so as to permit their inclusions in the National Guard Annual State Drug Support Plan.

(15) Normally, joint DOI bureau/National Guard pre-mission planning will be accomplished at least 72 hours prior to a mission. The DOI bureau will provide a manifest of all DOI employees who will be on the aircraft. The manifest will contain each person's full name and social security number. The DOI bureau will ensure that all persons are essential to the mission.

(16) When transporting DOI personnel, the ILLINOIS NATIONAL GUARD will ensure the Pilot in Command (PIC) has a minimum of 500 hrs/pilot time experience. If available ILLINOIS NATIONAL GUARD pilot personnel are unable to meet this requirement, the ILLINOIS NATIONAL GUARD cannot perform the mission request.

(17) Reimbursement actions, when required, will be in accordance with the following procedures:

- a. Form OAS-23, Aircraft Use Report, will be utilized according to the instructions provided. Questions regarding preparation of Form OAS-23 may be answered by Mr. Cliff Dalzell, telephone 208-389-2759.

- b. DOI will supply Form OAS-23 in sufficient quantity to the National Guard.

This Memorandum of Understanding shall become effective upon the signature of all involved parties and remains in affect until terminated. Any party may terminate this Agreement upon presentation of a written notice to the other party. The provisions of this MOU may be amended upon mutual agreement of both parties.

APPROVED:

Department of the Interior
Office of Aircraft Services

By: /s/ Robert L. Peterson

Title: Director

Date: June 14, 1990

Illinois National Guard
Plans, Operations, and Military
Support Office

By: /s/ Harold G. Holesinger
Major General

Title: State Adjutant General

Date: June 4, 1990

DRUG INTERDICTION & LAW ENFORCEMENT SUPPORT
SAFETY - RULES OF ENGAGEMENT - FORCE PROTECTION

1. **PURPOSE.** The purpose of this guidance is twofold: 1) to emphasize the importance of safety in the conduct of drug enforcement support operations and 2) to alert commanders to applicable areas of force protection, policy, and law.
2. **FORCE PROTECTION.** Commanders will ensure that pre-operation (liaison) coordination and planning with supported law enforcement agencies, addresses the safety of National Guard personnel and equipment throughout the operation. Consideration will be given to potential threats to National Guard personnel and property for force protection purpose. Commanders will also ensure that public affairs efforts, directed at complying with the right of the public to know, do not jeopardize the safety of National Guard personnel and equipment by disclosing personnel identification in photographs or video-recordings by the media.
3. **AIRCRAFT SAFETY.** The operation of aircraft constitutes a significant hazard. Pilots in command (PIC) are responsible for the aircraft and the lives of passengers and crew. In addition to other guidance on aircraft safety, PIC will not fly into or land in known hostile fire areas and will ensure that passengers are instructed in the principles of aircraft safety. Aircraft will maintain a minimum safe distance (no less than 200 meters) from any known hostile elements (out of effective small arms range) when initially inserting law enforcement personnel who will be responsible to establish and secure landing zones for further operations.
4. **SUPPORT ROLE.** The role of the national Guard in Drug Interdiction and Law Enforcement Support operations is to support law enforcement agencies. Generally, Guardsmen are not trained in law enforcement and are ill-prepared for that mission. Accordingly, commanders will ensure that their personnel are not put in situations that could bring them in direct contact with suspects.
5. **ARMING OF TROOPS.** Since the National Guard is in a support role and not directly engaged in law enforcement, Guardsmen should rarely be armed. Weapons and small arms ammunition (state security ammunition), when issued, will only be used for personal protection. Arms and ammunition will be secured until issued. Rounds will be chambered only on order of the senior military member present and in conjunction with the supported law enforcement agency. Firearms will not be discharged from aircraft or motor vehicles.
6. **USE OF FORCE.** Guardsmen have the right to use force (a) to defend themselves, other members of their team, law enforcement officers, or innocent bystanders, (2) to protect Federal property, and (3) to make arrests if they have arrest powers pursuant to para 7 below, but they may only use the minimum force necessary for that purpose. Deadly force (any force likely to cause serious injury or death) may only be used under the following circumstances:
 - a. Lesser means have been exhausted or are unavailable.
 - b. Risk of injury to innocent persons or bystanders is not increased by the use of deadly force.
 - c. Deadly force is the minimum force necessary to prevent death or serious injury to the Guardsman, other members of their team, law enforcement officers, or innocent bystanders.
7. **ARREST POWERS.** Guardsmen will be advised that their powers of arrest are normally those of ordinary citizens as apposed to law enforcement officers. Arrest powers are prescribed by state law and the state JAG should provide detailed guidance with regard thereto. Even in states where Guardsmen may have arrest powers, they should not be placed in situations where it may be necessary to exercise powers of arrest.
8. **RULES OF EVIDENCE.** Court system rules provide that exhibits cannot be offered into evidence in legal proceedings unless a chain-of-custody can be shown. This is especially true for items subject to

adulteration. To ensure admissibility of evidence, only law enforcement officers should seize or possess any items that are, or may become, evidence.

9. TORT LIABILITY. The Federal Tort Claims Act (FTCA) is applicable to guardsmen engaged in Drug Interdiction & Law Enforcement Support operations in a Title 32 status. A person whose property is lost, damaged, or destroyed, or who suffers personal injury or death as a result of a negligent act or omission of a Guardsman acting within the scope of his employment may file a claim against the United States under the FTCA. The Guardsman himself is immune from suit except for Constitutional torts (i.e. when the Guardsman's negligent act or omission constitutes a violation of the Constitutional rights of the injured party, including persons suspected of criminal activity). Guardsmen engaged in Drug Interdiction & Law Enforcement support operations in a state active duty status are entitled to whatever protections and immunities are afforded by state law.

10. PRECOMMITMENT BRIEFING. Guardsmen will be briefed on all aspects of the above before deployment and will be issued written guidance approved by the state JAG. Such written guidance will advise them of rules of engagement, their status (state active duty or Title 32), tort protection, medical benefits, and retirement points. The state shall maintain records showing which personnel have been briefed and copies of written guidance provided.

FY-90 SECDEF Approved Counter-Drug Support Operations

NOTE: The following counter-drug support operations are subject to change in number, definition, or by grouping in subsequent FYs or when deemed necessary.

1. Operation #1 - Ground Reconnaissance. Teams of guardsmen and LEA officers search a given area for cultivated marijuana or other drug operations.
2. Operation #2 - Ground Surveillance. Guardsmen maintain surveillance (with LEA officers), on isolated airstrips, drop zones, border crossing points, shore landing points, or other locations suspected as drug operation sites.
3. Operation #3 - Ground Transportation of LEA officers. Guardsmen transport LEA officers to/from remote sites for anti-drug operations.
4. Operation #4 - Ground Transportation of Seized Property/Contraband. Guardsmen transport seized property/contraband due to the remote location from which it must be moved. An LEA officer must maintain custody of evidence.
5. Operation #5 - Aerial Reconnaissance. An area is searched by air for cultivated marijuana or suspicious watercraft, aircraft, or motor vehicles.
6. Operation #6 - Aerial Surveillance. Guardsmen maintain surveillance on isolated airstrips, drop zones, the international border, coastal waterways, or other locations suspected of being drug operation sites.
7. Operation #7 - Aerial Transportation of Law Enforcement Officers. Guardsmen transport LEA officers by air because the target is in a remote location or because speed is essential.
8. Operation #8 - Aerial Transportation of Seized Property/Contraband. Guardsmen transport seized property/contraband due to the remote location from which it must be moved. An LEA officer must maintain custody of evidence.
9. Operation #9 - Ground Radar Monitoring. Based on a request for support from a law enforcement agency that also provides and flies intercept aircraft, airmen establish and operate ground radar sites.
10. Operation #10 - Cargo inspection at border entry points. guardsmen inspect cargo at border entry points. Supported LEA officers must be present at inspection locations, make necessary seizures, and maintain custody of evidence.
11. Operation #11 - Inspection of aircraft, watercraft, or motor vehicles. Guardsmen inspect aircraft, watercraft, or motor vehicles after all occupants are removed by LEA officers. Supported LEA officers must be present, make necessary seizures, and maintain custody of evidence.
12. Operation #12 - Training program for soldiers or airmen. In order to provide support requested by law enforcement agencies, soldiers or airmen receive training in the aerial identification of cultivated marijuana, on the legal aspects of drug enforcement support, and other related topics. If the national Guard presents the training, a POI is prepared/maintained.
13. Operation 13 - Training Program for law enforcement officers. In order to provide requested LEA support, the National Guard provides training in aircraft safety, aircraft operations, specialized equipment, or other topics related to National Guard anti-drug enforcement support. (POIs as needed)
14. Operation 14 - OV-ID Mohawk aerial reconnaissance, surveillance, and intelligence operations.

The OV-ID Mohawk is used to generate information and intelligence about specific areas or sites. The supporting unit provides photo analysis and interpretation as required; may include out-of-state support.

15. Operation #15 - RF-4C Aerial photo reconnaissance. The RF-4C is used to photograph specific areas or sites (in/out of state). Supporting unit provides photo analysis and interpretation. This operation requires that photo interpreters are trained to identify targeted drug operations.

16. Operation #16 - Liaison, planning, coordination, and reporting. The state establishes liaison with supported LEAs, plans and coordinates operations, resources manpower and equipment requirements for those operations, and gathers and submits required reports.

17. Operation #17 - Inspect for, collect and remove contraband. Guardsmen inspect vehicles or property for contraband. LEA officers must be present, make necessary seizures and maintain custody of evidence.

18. Operation #18 - Film processing for photo reconnaissance. The supporting unit provides film processing, photo analysis and interpretation. Planning for this operation must ensure that photo interpreters are trained and able to identify targeted drug operations.

19. Operation #19 - Transport DEA fuel and tanks to outer islands. The supporting unit transports fuel and tanks to outer islands to support anti-drug law enforcement operations.

20. Operation #20 - Aerial reconnaissance and transport. States are given authority to conduct aerial reconnaissance and transport LEA officers and/or contraband on IDT. Funding is limited to provide flying hours; other aspects are done as incidental to training using local resources.

21. Operation #21 - Security for radar sites. Radar site security for personnel and equipment when CONUS anti-drug support operations are conducted.

22. Operation #22 - Transportation of seized watercraft. Guardsmen transport seized vessels in anti-drug law enforcement support operations. LEA officers will be present to maintain custody of evidence, vessels and suspects.

23. Operation #23 - Admin/Intel, ADP, and logistics support. Guardsmen conduct various special anti-drug support LEA operations when approved.

24. Operation #24 - Engineer support. Supported LEA requests engineer support to destroy or deny access to (secure/board up) known "crack houses."

25. Operation #25 - Maintenance support. Mandays are requested to provide maintenance support (in MOS/AFSC related areas) for an LEA to allow LEA personnel to perform law enforcement tasks.