

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MASSACHUSETTS NATIONAL GUARD
AND
THE DEPARTMENT OF THE INTERIOR

SUBJECT: National Guard Support to Department of the Interior Counterdrug Operations.

1. GENERAL: This memorandum sets forth policies and procedures agreed to by the Adjutant General of the Massachusetts National Guard and the Department of the Interior (DOI) regarding National Guard support to DOI drug law enforcement operations in the Commonwealth of Massachusetts. For the purpose of this memorandum, the term Department of the Interior includes all of the subordinate agencies in the department.

2. PURPOSE:

a. The purpose of this memorandum is to establish policies and procedures under which the Massachusetts National Guard may provide assistance to the drug interdiction and eradication efforts of the DOI in the Commonwealth of Massachusetts.

b. This memorandum will facilitate implementation of appropriate sections of the national Defense Authorization Act of 1989, (Public Law 100-456, September 29, 1988) wherein the Congress appropriated funding for the National Guard to provide assistance in drug interdiction/eradication in support of national efforts to deter interdiction/eradication in support of national efforts to deter drug traffickers and improve the utilization of federal resources.

3. OBJECTIVES:

a. To establish a cooperative working relationship between the Massachusetts National Guard and the Department of the Interior.

b. To supplement the manpower and resources of the DOI in the Commonwealth of Massachusetts in its mission of counterdrug enforcement.

c. To establish procedures for lending military equipment and the utilization of military personnel in the activities covered by the Counterdrug Support Plan of the Massachusetts National Guard.

d. Specific procedures for the deployment of National Guard personnel and equipment will be outline prior to each support operation. This will include command and control, ground/air safety, and physical security.

4. POLICIES AND PROCEDURES:

a. All missions described within this memorandum will be accomplished when the personnel of the Massachusetts National Guard are not in federal service and are:

- (1) Under state active duty in compliance with appropriate state laws and regulations; or
- (2) Under Title 32, USC while performing normal training missions; or
- (3) Under Title 32, USC while performing additional duty over and above normal training missions.

b. Massachusetts National Guard personnel and equipment may be deployed for counterdrug activities in support of DOI operations within the Commonwealth of Massachusetts.

c. The support rendered by the Massachusetts National Guard will not interfere or detract from scheduled training. However, requests may be approved, by the Adjutant General to be performed in an incidental to training status [ref. 4a(2)].

d. National Guard personnel performing a support role will remain in the command of the designated military commander.

e. Under normal circumstances, National Guard personnel will not be armed. The Adjutant General may, on a case-by-case basis, approve a law enforcement request to arm personnel for a specific operation.

f. National Guard personnel will immediately provide all information relating to drug operations/activity gathered during a support mission to the appropriate DOI agent.

g. Information gathered by members of the National Guard will be treated as sensitive law enforcement/military information and will be protected from public disclosure or disclosure to unauthorized persons.

h. Information that would reveal the identities of individual members of the Massachusetts National Guard, involved in counterdrug operations, will be protected from disclosure outside the National Guard and the DOI to the extent consistent with law and with the requirements for prosecution of cases arising from such operations.

i. The DOI is responsible for making all public information releases involving drug operations. Any releases referring to the National Guard will be coordinated with the Massachusetts National Guard State Public Affairs Office at (617) 944-0500, extension 2230.

j. National Guard personnel will not perform law enforcement duties such as arrests, searches, or seizures.

k. National Guard personnel will not conduct intelligence operations directed at individuals.

l. National Guard personnel will not become involved in the chain of custody of either evidence or persons.

m. The DOI will report all arrests and seizures made during a operation in which the National Guard is involved, to the National Guard Counterdrug Operations section.

n. The loan of National Guard equipment will be in accordance with current National Guard policies, procedures, and regulations.

5. FORCE PROTECTION/RULES OF ENGAGEMENT:

a. Use of Force. National Guard members have the right to use force to defend themselves, other members of their team, law enforcement officers/agents, or innocent bystanders. Only the minimum force necessary will be used.

b. Deadly Force. Deadly force is defined as any force that is likely to cause serious injury or death. National Guard personnel may use deadly force under the following circumstances:

(1) Lesser means have been exhausted or are unavailable.

(2) Risk of injury to innocent persons or bystanders is not increased by the use of deadly force.

(3) Deadly force is the minimum force necessary to prevent death or serious injury to National Guard personnel, law enforcement officers/agents, or innocent bystanders.

6. CATEGORIES OF SUPPORT:

a. Support provided by the Massachusetts National Guard must fall within the parameters of one or more of the sixteen operations approved by the National Guard Bureau.

b. The National Guard may provide support as appropriate in the following areas:

(1) Ground Reconnaissance. Guard members reconnoiter an area (private lands, abandoned property, and public lands) for cultivated marijuana or other drug operations. Marijuana may be eradicated if requested.

(2) Ground Surveillance. Guard members maintain area surveillance on isolated airstrips, drop zones, shore landing points, or other locations suspected as sites for drug smuggling or production activity.

(3) Surface Transportation Support. National Guard provides transportation to law enforcement personnel and persons in their custody, seized property or contraband, to and from counterdrug operations sites. Law enforcement personnel are responsible for the security of any evidence or persons in their custody. This transportation assistance must be concurrent with on-going counterdrug operations.

(4) Aerial Reconnaissance. National Guard members reconnoiter an area by air for cultivated marijuana, suspicious watercraft, aircraft, or motor vehicles.

(5) Aerial Surveillance. National Guard members maintain area surveillance on isolated airstrips, drop zones, coastal waterways, or other suspected drug operation sites/locations.

(6) Aerial Transportation Support. See 7b(3) above.

(7) Ground Radar Support. National Guard members establish and operate ground radar sites capable of providing air intercept control.

(8) Cargo Inspection (In/Out Bound). National Guard members inspect cargo at border entry points. Cargo includes: unoccupied vehicles, containers, aircraft, watercraft, baggage, suspect mail, etc. Guard members establish and operate ground radar sites capable of providing air intercept control.

(9) Training Programs. National Guard members provide training to law enforcement personnel in counterdrug related areas in which the military may have a particular expertise or resource not readily available to the law enforcement agency.

(10) Aerial Photo Reconnaissance and Surveillance. The National Guard provides an aerial platform for the DOI to take photographs. The National Guard may provide the photographer and camera if requested.

(11) Liaison, Planning, and Coordination. The National Guard provides personnel to conduct liaison with the DOI. The National Guard may provide personnel to work with DOI personnel to assist in the planning and coordination of operations.

(12) Greenhouse/Drug Lab Detection/Eradication. This mission may involve surveillance or monitoring, eradication, destruction or dismantling of marijuana greenhouses/drug labs. This includes the use of Forward Looking Infrared (FLIR) to detect excessive heat sources.

(13) Film Processing for Photo Reconnaissance.

(14) Administrative, Information, Logistics, and Maintenance Support. This mission may include the National Guard providing administrative, maintenance, or logistical personnel to release a DOI agent for counterdrug duty. National Guard personnel may translate typed or taped conversations. National Guard personnel will not participate in real time/active conversation monitoring. This mission may also include the National Guard establishing and operating Command Posts/Booking Facilities for sweep type operations.

(15) Engineer Support. The National Guard may provide engineer type assets to seal or deny access to known "crack houses" or similar facilities such as drug labs.

(16) Aerial Interdiction. Resources from various units may be brought together in a joint "Hub" effort to detect, track, monitor, and transport DOI personnel to effect areas of drug smugglers/traffickers.

c. Some of the above missions require that a DOI agent remain with National Guard teams at all times. In some instances, if DOI agents are not collocated with all National Guard teams supporting an operation, there must be a continuous communications link maintained between each element so that agents are able to respond immediately.

d. Requests for National Guard Support should be made as far in advance as possible.

e. Ammunition will not be chambered in weapons while in National Guard aircraft. Weapons will not be fired from aircraft. A specific aircraft briefing will be given prior to each flight.

f. The pilot-in-charge of any National Guard aircraft used in DOI operations will have a minimum of 500 hours of flight experience.

g. Any requests for assistance beyond the terms of this agreement will be made with the Massachusetts National Guard Counterdrug Coordination Officer at (617) 944-0500, extension 2420.

7. FUNDING: Normally the activities described herein will be supported from National Guard funds and no cross reimbursement will be required. However, any loan of equipment or special missions which may incur obligations for DOI funding must be authorized by the Adjutant General and DOI prior to the obligation of funds and mission approval.

8. TERM OF AGREEMENT: This memorandum is in effect upon signature by both agencies. It will remain in effect until rescinded, revised, or suspended by either party on thirty days written notice, or revised in writing by mutual consent. As a minimum this memorandum will be reviewed annually. This agreement is subject to the availability of funding.

/s/ Wayne F. Wagner
Major General
The Adjutant General
Date: May 21, 1993

/s/ Robert L. Peterson
Director, OAS
Department of the Interior
Date: June 11, 1993