

MEMORANDUM OF UNDERSTANDING

BETWEEN

THE ARIZONA NATIONAL GUARD

AND

DEPARTMENT OF THE INTERIOR

PURPOSE

This memorandum sets forth policies, procedures and guidelines agreed to by the Arizona National Guard (hereinafter "National Guard") and the Department of the Interior (hereinafter "Agency") governing National Guard cooperation and support of Agency's drug law enforcement operations in the State of Arizona pursuant to 32 U.S.C. 112, and other applicable federal and state statutes.

As the National Guard is not a law enforcement agency, any involvement of the national Guard in support of drug law enforcement must be in response to a law enforcement agency request. Therefore it is the responsibility of the Agency to request support from the National Guard for approved counter-drug operations. These requests must be coordinated through the National Guard counter-drug coordinator (CDC).

It is understood among parties to this agreement that Agency requests for National Guard assistance may include multi-agency, federal, state and local cooperative law enforcement efforts.

National Guard personnel are initially deployed to support the Agency based upon specific requests for these members to perform specific job skills in specific areas. Any deviation from the initial approved request, other than a minor change, should be coordinated and approved in writing with the National Guard CDC.

TERMS OF AGREEMENT

This memorandum is in effect upon signature of both parties and will remain in effect until rescinded, revised or suspended by either party on 30 days written notice or revised in writing by mutual consent. Upon signature, this agreement supersedes any other previously signed agreement which is contradicted by this agreement.

This agreement constitutes the entire agreement between the Agency and the National Guard. Any modifications, additions or deletions shall be in writing and signed by both parties. In the event any provision of this agreement shall be determined to be unenforceable, that provision shall be deleted from the agreement and this agreement shall remain in force without such unenforceable provision.

Agreements concerning specific operations shall be set forth in separate operational plans executed by both parties. If requested, Agency agrees to provide the CDC with a law enforcement after action report (NGB CD-04) within five days after the completion of a particular operation if at all possible.

FUNDING

Normally, the support and coordination provided by the National Guard, pursuant to this agreement, will be funded federally from 32 USC 112 and no reimbursement by the Agency will be required. However, any loan of equipment or missions which may require reimbursement, and therefore incur obligations from Agency funding, should be coordinated and approved between the parties prior to mission accomplishment. In no case will the National Guard expend state resources on behalf of the Agency,

except in emergency operations in the protection of human life, without a reasonable expectation of funding by the federal government.

Any funds expended by Agency conforming guard members to the standards expected of other employees employed by Agency (whether in relation to security concerns or professional expertise) will not be reimbursed by the National Guard, nor will the National Guard expend any resources beyond those normally expended by the national Guard to conform its members in such areas for any particular Agency.

All National Guard operations are subject to available funding.

PUBLIC AFFAIRS/OPERATION SECURITY

It is important that all personnel involved in the support to law enforcement be aware of and follow appropriate security precautions. Different operations and missions may carry different security classifications and these may not correspond to the standard DOD security classification system. Therefore the Agency will be responsible for classifying the operation, and any information obtained, and for making any public information releases.

Information released to the media concerning National Guard assistance to Agency or National Guard participation in drug law enforcement missions will be coordinated between Agency and National Guard public affairs/information officers. Participating National Guard personnel or specific units will not be identified by name, address or photograph unless cleared through the National Guard CDC who will be responsible for obtaining a release through applicable National Guard channels.

The lead party for the dissemination of information concerning specific operations will be the Agency and therefore members of the National Guard will refer all questions from the media to the Agency for reply. However, the National Guard public affairs office may provide guidance on issues specific to the National Guard as appropriate.

It will be the responsibility of both the Agency as well as the National Guard to brief members of the National Guard on operational security. However, it is the responsibility of the Agency to brief and train members of the National Guard on any matters of security peculiar to the Agency to insure that National Guard members do not inadvertently disclose information about their

support roles with the Agency or any specific missions with which they are involved.

National Guard members in an operations duty status will not be interviewed by the media without National Guard Bureau approval.

News media representatives can accompany the National Guard on counter-drug support operations only after coordination with, and approval by, the Agency and the National Guard Bureau Public Affairs Office. Media representatives will be accompanied by a qualified public affairs officer.

APPROVED SUPPORT SERVICES AND RESOURCES

Permissible support services and resources that may be provided to the Agency by the National Guard are not listed in this memorandum of understanding for purposes of brevity. They consist of any missions that fall within the Arizona National Guard state plan that are approved by the Secretary of Defense. Other missions, not contained within the confines of the plan may be provided if such missions are contained within NGR 500-2/ANGR 55-05 and approved by the Attorney General of Arizona.

POLICIES AND PROCEDURES

PERSONNEL

All missions funded by 32 USC 112 will be accomplished when the personnel of the National Guard are not in federal service and are in either state active duty or performing service pursuant to Title 32 of the United States Code.

It is clearly understood by both parties to this agreement that National Guard personnel are not peace or police officers and those personnel who are assigned to work with the Agency are only assigned in a support role.

As such, National Guard personnel will be under the direct supervision of Agency personnel while assigned to the Agency for support although National Guard members will also maintain their own military chain of command.

SAFETY AND TRAINING

National Guard members should not knowingly be sent to or directed to enter an hostile environment where there is a probability of encountering life threatening situations. If life threatening situations occur, they will be handled in accordance with the rules surrounding the use of force and deadly force.

Every effort must be made by the Agency to avoid placing National Guard personnel in situations where they will come into contact with suspects.

An Agency law enforcement officer must accompany National Guard personnel on all missions where contact with citizens is imminent. An Agency law enforcement officer must be physically present in the area of each operation involving National Guard personnel when information gathering or intelligence activity is involved.

The Agency will provide necessary initial and follow-up information and training to National Guard personnel that is appropriate to the mission which is supported. The National Guard should ensure that its personnel are properly trained.

AIRCRAFT SAFETY

As aircraft safety is of paramount importance, the pilot in command (PIC) is responsible for the aircraft and the lives of all passengers and the crew. A PIC will not fly into or land in a known hostile fire area. The PIC will ensure that all passengers are instructed in the principles of aircraft safety. Aviation support provided shall be conducted in compliance with Army and F.A.A. regulations. The PIC shall be the final authority in all matters concerning the safe accomplishment of the mission. The PIC will ensure that all passengers and ground support crews are provided with a briefing covering General Aviation Safety, mission to be flown and specific safety considerations of the mission.

Weapons, flares or other incendiary devices or projectiles shall not be discharged from National Guard aircraft whether in the air or on the ground.

Weapons carried on board an aircraft will not have chambered rounds.

Each aircraft involved in counter drug missions shall have at least one law enforcement agent on board. It will be the responsibility of the Agency to provide the national Guard, or the PIC, with an accurate manifest of passengers. The National Guard, or the PIC, is the final authority concerning the number of passengers allowed, the size of the loads allowed, and the operations in or near the aircraft.

When transporting DOI personnel the National Guard will assure pilot in command has a minimum of 500 hours pilot time experience. If available National Guard personnel are unable to meet this requirement the National Guard will refuse the mission request.

ARRESTS, SEARCHES, SEIZURES, CHAIN OF CUSTODY

As a matter of National Guard Bureau policy, National Guard personnel will not make arrests. National Guard members have only the arrest powers of ordinary citizens. National Guard personnel may make arrests or conduct searches to the extent authorized by state law when exigent circumstances arise such as an assault upon a law enforcement officer by a suspect, observation of a felony in progress, or as otherwise provided by state law for citizen's arrest, or for the prevention of harm to members of the public, or a search incident to an arrest arising under exigent circumstances. However, operations should not be designed or conducted in such a manner as to involve a significant likelihood of requiring such arrest or searches.

Chain of command emphasis must be maintained to ensure National Guard personnel do not become involved in arrests or searches of individuals.

The Agency or other supported law enforcement agency engaged in a joint task force operation with the Agency will be responsible for obtaining any warrants required for arrests or searches, or for determining that any arrests, searches, inspections or observations do not require warrants.

National Guard personnel will not become involved in the chain of custody of evidence.

WEAPONS

National Guard personnel will not be authorized to carry firearms unless identified as necessary by the Agency and the National Guard and approved by both the National Guard and the Agency. Prior to carrying firearms on an Agency mission, National Guard personnel must have successfully completed a firearms qualification program as determined by the Agency. National Guard members must be trained in the use of deadly force prior to carrying firearms on a mission.

National Guard personnel will never be allowed to carry their personal firearms or weapons while performing support to law enforcement duty.

If and when National Guard members are authorized to carry firearms, the arms and ammunition will be secured until they are issued. Rounds will be chambered only on order of the senior military member present and in conjunction with the supported law enforcement agent present or if necessary for self-protection or the protection of others. The senior military member and the law enforcement officer should only order the chambering of rounds in the event that such action is necessary to protect the group or others.

Firearms will not be discharged from motor vehicles or aircraft.

MILITARY UNIFORMS

National Guard personnel will wear appropriate military uniforms while performing counter-drug support duty unless this requirement has been explicitly waived by the Adjutant General.

SURVEILLANCE

National Guard personnel involved in surveillance must be made aware of violence and/or threat potential of identified suspect(s) as an issue of personal or public safety so as to ensure successful and safe completion of the specific mission.

National Guard personnel who are engaged in counter-drug activities may support the Agency or other law enforcement agency engaged in a joint task force operation with the Agency by participating in area surveillance activities and by assisting in the observation and tracking of vessels, aircraft, or ground

vehicles suspected by the law enforcement agency in question of involvement in drug activities. while National Guard personnel are prohibited from participating in covert surveillance which is systematically and deliberately directed at a particular named individual, their surveillance activities may include the observation of persons whose presence is incidental to the activities described above. In other words, National Guard personnel will not be utilized in surveillance activities in which they are told to observe and report the activities of any specific named individual. Where possible, Agency agrees it will not provide the National Guard with the names of any persons subject to surveillance under the terms of this agreement.

INFORMATION GATHERING

Information or data obtained by the National Guard as a result of surveillance or other work done in support of the Agency will be passed immediately as obtained to the Agency and will not be stored/maintained by National Guard personnel or in National Guard facilities. Procedures to be utilized for reporting such information will be established by the Agency in accordance with its practices and procedures. The Agency will be responsible for follow-up on any such information.

Information provided to the National Guard by the Agency will not be released to non DOD sources.

Information gathered by members of the National Guard will be treated in the same manner as classified military information within the National Guard. Information furnished by the National Guard to the Agency will be treated as "sensitive." Information reported for law enforcement purposes may be disclosed for civil or criminal purposes, in accordance with national security and Privacy Act requirements.

Freedom of Information requests will be coordinated with Agency prior to resolution.

COMMUNICATION

Both the National Guard and the Agency may own communication frequencies which they may authorize the other party (the "non-owner") to use through a memorandum of understanding signed by both parties. Neither this agreement nor such a memorandum discussed above will supersede FCC requirements. The non-owner who utilizes the other party's ("the owner") communication frequency is responsible for complying with all requirements set forth by the owner concerning the integrity of all communication transmissions.

Unessential words or conversations are not authorized during communication transmissions. All communication transmissions (whether by radio, telephone or cellular phone etc) will be pertinent to the mission. Any calls, on property owned by the National Guard, which are to be paid from the National Guard counter-drug budget must be documented on a DA Form 360 and submitted monthly to the counter-drug coordinator.

ENVIRONMENTAL CONSIDERATIONS

If there is a need for an environmental assessment or an environmental impact statement under the National Environmental Policy Act, P.L. 91-190 (42 U.S.C. 4321 et.seq) the Agency will be responsible for preparing all necessary documentation.

RULES OF ENGAGEMENT

National Guard members, as earlier stated, should not be placed into situations that could be life threatening since they have not received the appropriate law enforcement training. In the event that National Guard members must use force the following rules apply.

National Guard members have the right to use force only if necessary to defend themselves or in the defense of others. They can only use that amount of force necessary to achieve that goal. They are only

to use deadly force if all lesser means of force have been exhausted or are unavailable, if it is the minimum force necessary to prevent death or serious bodily injury to themselves or others, and only if the risk of injury to innocent persons or bystanders is not increased by the use of deadly force.

EQUIPMENT

It is permissible for both the National Guard and the Agency to loan each other equipment. Such loans of equipment should be documented in writing with at least the following information; a full description of the item, its condition at the time of the loan, the length of time of the loan and the location to which the item is to be returned.

The loan of National Guard equipment to the Agency will be in accordance with NGR 500-2ANGR 55-05 and other applicable National Guard regulations to include AR 700-131, and AFM 67-1/ANGR 67-1. The loan of equipment to the National Guard by the Agency will also require that applicable National Guard regulations be followed.

Both parties to this agreement agree to contact the other party as soon as possible to report any damage caused to the equipment of the other. Unless contrary to law or regulation, each party agrees to be financially responsible for any damage to the equipment of the other party, caused by the borrowing party's personnel, whether through negligent conduct or willful misconduct.

/s/ for Donald L. Owens, Major General
The Adjutant General
Date: April 27, 1992

/s/ Robert L. Peterson
Date: April 23, 1992

/s/ Legal Officer, AZNG
Date: April 4, 1992