

# MEMORANDUM OF UNDERSTANDING

between

THE DEPARTMENT OF THE INTERIOR

and

THE MICHIGAN 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 Michigan National Guard.

## 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 bureau includes any major component of the Department of the Interior such as National Park Service, Fish and Wildlife Service, Bureau of Land Management, United States Geological Survey, Bureau of Indian Affairs, etc.

The term Michigan National Guard includes the Michigan Army National Guard and the Michigan 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**

Procedures defined in the National Guard Regulations shall be incorporated into Article V of this MOU. Additionally, the following procedures shall be followed:

1. The DOI bureau concerned will contact the Office of Military Support Michigan National Guard, 2500 S. Washington Avenue, Lansing, MI. Phone (517) 483-5896. FAX (517) 483-5822 for all activities to be conducted under this MOU. The Bureau person making these contacts will be the Bureau Chief Law Enforcement Officer.
2. 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 inclusion in the National Guard Annual State Drug Support Plan by 1 May of each year for the following fiscal year - 1 October - 30 September.
3. 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 assure that all persons are essential to the mission.
4. A DOI-sponsored participant who is not a DOI employee and considered essential for successful mission completion must be pre-approved by the National Guard before flying on Guard aircraft.
5. The National Guard will brief DOI participants flying in National Guard aircraft on: location and use of safety equipment, crash procedures, and emergency egress procedures.
6. Pre-commitment/Deployment Briefing Requirements.
  - a. Prior to deployment for each mission, all National Guard personnel will be briefed by a law enforcement officer as to their mission, the current situation in the area of operation. Rules of engagement, use of deadly force, ammunition loading, self-protection, and force protection will be briefed by the OIC/NCOIC.
  - b. The supported law enforcement personnel will be briefed as to the role, command and control, and permitted actions of the supporting military personnel.

c. National Guard personnel will normally be deployed as part of a team with law enforcement personnel. At no time will Guardsmen be employed alone or as law enforcement personnel.

d. National Guardsmen will not become involved in the chain of custody of seized property or the arrest of personnel. Personnel arrested will not be transported in National Guard aircraft. The Michigan national Guard can transport prisoners by ground transportation, provided they are accompanied by law enforcement officers and are restrained in such a way that they are not capable of inflicting any injury on National Guard personnel or vehicles.

e. The National Guard may provide support for the transportation of drugs/substances provided that all drugs/substances be accompanied with and in the custody of law enforcement personnel at all times.

f. National Guard personnel will not assist in or be involved with the processing/handling/transportation of substances/materials confiscated by the Michigan State Police from any clandestine laboratories which involve toxic or hazardous chemicals that require special handling by trained personnel. Any transportation of chemicals or hazardous or toxic materials will be in compliance with state and federal law.

#### 7. FORCE PROTECTION. Imminent Danger Situations.

a. National Guard personnel and equipment must not be subjected to a known hostile environment.

b. National Guard personnel and equipment may be used to provide support in an operational area as long as the threat of direct hostile fire has been eliminated.

c. National Guard personnel and equipment, particularly aviation assets, will not be employed in the vicinity of an area in which bodily harm can be expected to occur, (e.g., landing law enforcement personnel in the immediate vicinity of a marijuana field) or terrain indefensible by law enforcement.

d. In situations where imminent bodily harm may occur and time is available to employ other law enforcement resources, military personnel will not be employed.

e. In the event National Guard become inadvertently exposed to a hostile threat or environment, they will be disemployed as rapidly as possible and withdrawn from the area.

8. DOI bureaus will limit requests for National Guard support to those instances where there is an overriding concern for operational security (confidentiality) or when civilian aircraft are unavailable.

9. DOI bureaus will not request aircraft support for administrative point-to-point flights.

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

11. Flight following will be provided on all flights.

12. No night landings at unimproved landing sites will be made unless the landing site has been surveyed by the National Guard during the day. This includes unaided night and night vision goggles (NVG) missions.

14. Publicity releases and news releases involving activities under this MOU will not be initiated by either party unless mutually agreed upon.

15. In case of an aircraft accident, the military will conduct the accident investigation and the Office of Aircraft Services, Department of the Interior will provide an investigator to assist and provide liaison to the military investigating team, as required.

16. The National Guard will coordinate directly with Department of the Interior, Office of Aircraft Services, when communicating information pertaining to agreement policy revisions, program recommendations, or management concerns regarding implementation of the agreement.

#### 17. ARMS AND AMMUNITION

##### a. Arming of Troops

1. The requirement to arm National Guard personnel for a support mission must be considered on a case-by-case basis and a decision made through coordination between the lead civil law enforcement agency for an operation and Michigan National Guard Task Force Commander.

2. This decision will be consistent with the controlling principals of self-protection and minimum amount of force necessary for accomplishment of the mission.

##### b. Use of Ammunition

1. If the decision is made to arm troops for a mission, the military commander is then authorized to issue live ammunition to personnel under his command or control and troops will deploy with the established basic load.

2. Military personnel will load weapons and/or chamber rounds only on order of the military officer in charge/non-commissioned officer in charge. However, the civil law enforcement officer in charge may advise the military officer in charge/non-commissioned officer in charge when he feels it necessary to load weapons and/or chamber rounds.

#### 18. WEAPONS RESTRICTIONS.

a. Weapons carried on board military aircraft will not have chambered rounds.

b. Weapons/pyrotechnics will not be discharged from military aircraft/vehicles.

c. Use of deadly force. The use of deadly force by military personnel is that of a private citizen and is authorized where all three of the following conditions are met:

(1) Lesser means have been exhausted or are not available.

(2) Risk of death or bodily harm to innocent persons is not increased.

(3) Purpose of use of deadly force is one or more of the following:

(a) Self defense to avoid death or serious bodily harm.

(b) Prevention or crime involving a substantial risk of death or serious bodily harm to another person.

### **Article VI. Reimbursement**

Missions approved in the National Guard State Drug Support Plan do not require DOI reimbursement. Other missions (unprogrammed) approved by DOD/NGB and the State Adjutant General may require reimbursement. When reimbursement is required, rates for aircraft will be as prescribed by the State

Adjutant General, but will not exceed rates prescribed in the DOD aircraft reimbursement rate schedule.

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

1. Form OAS-23, Aircraft Use Report, will be accomplished according to instructions provided. Questions regarding preparation of Form OAS-23 may be answered by Mr. Cliff Dalzell, telephone 208-389-2759.
2. DOI will supply Form OAS-23 in sufficient quantity to the National Guard.

#### **Article VII. Amendment, Agreement Period, and Termination**

This Memorandum of Understanding shall become effective upon the signature of all involved parties and remains in effect 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 at any time upon mutual agreement of both parties.

APPROVED:

Department of the Interior  
Office of Aircraft Services  
By: /s/ Robert L. Peterson  
Title: Director  
Date: September 26, 1991

Michigan National Guard  
  
By: /s/ E. Gordon Stump  
Title: Adjutant General  
Date: October 30, 1991