

MEMORANDUM OF UNDERSTANDING

between

THE DEPARTMENT OF THE INTERIOR

and

THE NORTH DAKOTA NATIONAL GUARD

FOR DRUG ERADICATION AND INTERDICTION OPERATIONS

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 North Dakota 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 and specific National Defense Authorization Act public law as enacted.

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 North Dakota National Guard includes the North Dakota Army National Guard and the North Dakota 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 and public law.

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 and public law.

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 or in his absence, Plans, Operations and Military Support Office, North Dakota Army National Guard, (701) 224-5149/5148/5138, 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.
3. 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 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. 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.
7. DOI bureaus will not request aircraft support for administrative point-to-point flights.
8. 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.

9. Flight following will be provided on all flights.

10. 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.

11. Ammunition will not be locked and loaded in weapons carried in the aircraft. Weapons will not be fired from the aircraft.

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

13. In case of an aircraft accident, the supported agency will contact the POMSO, NDARNG, (701) 224-5148/5149 as soon as possible. The military will then 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.

14. 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.

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. Revenue Sharing

Assets seized by DOI as a result of enforcement operations supported by the National Guard under this MOU will be forfeited to the United States pursuant to 21 U.S.C. Section 881. Assets will be shared equitable among the law enforcement agencies whose personnel participated directly in the seizure or forfeiture pursuant to the U.S. Attorney General's Guidelines on Seized and Forfeited Property, as revised from time to time. The National Guard acknowledges that the disposition of assets forfeited under federal law is within the discretionary authority of the United States Department of Justice.

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.

Signed and dated this 3rd day of December, 1990.

APPROVED:

Department of the Interior
Office of Aircraft Services
By: /s/ Robert L. Peterson
Title: Director

North Dakota National Guard

By: /s/ Alexander P. McDonald
Title: The Adjutant General