



OKLAHOMA NATIONAL GUARD
JOINT FORCE HEADQUARTERS
3501 MILITARY CIRCLE
OKLAHOMA CITY OK 73111-4398
(405) 228-5000 OR DSN 628-5000

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE OKLAHOMA NATIONAL GUARD COUNTERDRUG PROGRAM
AND
THE OKLAHOMA INFORMATION FUSION CENTER

SUBJECT: Memorandum of Understanding (MOU) between the Oklahoma National Guard Counterdrug (OKCD) Program and the Oklahoma Fusion Center (OKFC) regarding OKCD participation in law enforcement counterdrug operations.

1. PURPOSE. This MOU is intended to set forth policies and procedures and identify the terms and conditions regarding the utilization of OKCD in support of Counterdrug Operations, as agreed between the OKFC and the Counterdrug Coordinator (CDC) of the OKCD Program.
2. AUTHORITY. OKCD is a reserve component of the United States Armed Forces. The Governor is the Commander-in-Chief of the Army and Air National Guard units of his state when these units are not in a federal (Title 10) status. Such authority is derived from Article 1, Section 8, Clause 16 of the United States Constitution. Department of Defense (DoD) and National Guard Bureau (NGB) policy pertaining to the use of National Guard resources in a support role are contained in National Guard and Air National Guard Regulations.
 - a. National Guard Regulation (NGR) 500-2/Air National Guard Instruction (ANGI) 10-801.
 - b. OKCD State Support Plan.
 - c. All applicable flight regulations of the United States Army and the Army National Guard.
 - d. OKCD Standard Operating Procedures (SOP).
 - e. United States Code, Title 32 et seq, National Guard.
 - f. United States Code, Title 28, Sections 2671-2680, The Federal Tort Claims Act (FTCA).
3. REPORTING PROCEDURES. OKCD is required to provide timely reports and share information which is essential to the success of the OKCD Program. Sensitive information is not included in such reports. When necessary OKFC agrees to assist

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OKCD in making such reports by providing OKCD information of seizures and plant counts, arrests, and DDR audience numbers that are directly attributed to OKCD support. OKFC further agrees to respond to any surveys when requested by OKCD.

4. COMMAND AND CONTROL:

- 4-1. The office of the Adjutant General is the higher headquarters of the OKCD Program. The Adjutant General (AG) controls the activities of OKCD through the Counterdrug Coordinator (CDC). The AG and the CDC retain the right to recall any and all OKCD personnel or equipment at any time.
- 4-2. All requests for counterdrug support must have a primary "counterdrug nexus" and be routed to, and coordinated with, OKCD. Requests for support shall be in writing using a standard office memorandum with OKFC's letterhead.
 - a. If urgency is a consideration, a verbal request for support will suffice, but shall be followed up in writing within 48 hours.
 - b. The CDC will establish and Officer in Charge (OIC) and military Chain of Command (COC) for each operation. The OIC is responsible for on-site command and control and administration of the military aspect of any operation.
- 4-3. In order to ensure adequate mission planning and execution, OKFC will provide specific objectives with each mission and designate a single OKFC point of contact for that mission prior to actual execution.

5. SCOPE OF OPERATIONS

5-1. AVIATION OPERATIONS

- a. Aircraft Usage: Usage of aircraft will be primarily limited to aerial observation or reconnaissance. When approved by the CDC on a case by case basis, aircraft may be used for the transportation of personnel, seized property or contraband as part of ongoing time-sensitive counterdrug operations, and life-threatening emergencies, when security or other special circumstances reasonably necessitate OKCD support. Law Enforcement Agency (LEA) officers are responsible for the security of any evidence or persons in their custody. Routine administrative aerial transportation is not permitted. Counterdrug support activities may include the reconnaissance and assistance in the tracking of vessels, aircraft or ground vehicles suspected of involvement in drug activities. The AG, the CDC, or his designated representative must first authorize requests for variation to these issues.

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- b. Landing Zone/Pickup Zone (LZ/PZ) Limitations. OKCD aircraft will primarily use only airports and helipads that are listed for military and public use. Landing at sites other than this will only be if it is mission essential as determined by the OKFC senior agent present. OKFC will be responsible for any legal prerequisites required for landing at the site. Aircraft will not be landed for the purpose of placing law enforcement officers into a known hostile area.
- c. OKCD personnel and equipment will not be used to transport news media or other persons not directly and officially connected with the mission. The AG or CDC must give prior approval to exceptions from this policy.
- d. The OKFC senior agent on site shall have the authority to determine eligibility of passengers with the following guidelines; any officer that can produce official credentials as an LEA and is essential to the mission is an eligible passenger. Potential passengers that do not meet this requirement but are determined essential to the mission as determined by the OKFC senior agent must be approved by the CDC. The Pilot in Charge (PC) shall have preemptive authority to exclude passengers for any safety reason.
- e. OKFC will contact OKCD as far in advance as possible, prior to the date the aircraft is required. The designated OKFC agent in charge will provide OKCD with a minimum of the following information when requesting support:
 - i. Time and location of pickup;
 - ii. Approximate duration of the mission, if known;
 - iii. Type of mission;
 - iv. Point of contact, if available.
- f. Due to the large number of support requests and limited number of aircraft resources, conflicts will be resolved by OKCD on a case by case basis. A pilot will at no time be placed in a position of establishing priorities between LEAs.
- g. When authorized, LEAs may carry weapons on board an aircraft; the weapons may be carried with no rounds chambered and on "safe." Side arms will remain in their holsters while aboard the aircraft. Any weapon that fires from an open bolt position will have the magazine removed. Weapons, flares, explosive or incendiary devices shall not be discharged from OKCD aircraft while in the air or on the ground, and all devices will be carried in accordance with (IAW) military aircraft safety procedures.
- h. In addition to other guidance on aircraft safety, OKCD pilots will not fly into, or land in, known hostile fire areas. Further, OKCD pilots shall be instructed that in the event of any hostile actions which could potentially endanger aircraft, crew or passengers, the pilot shall immediately take the most appropriate evasive and

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defensive action. Under no circumstances shall the aircraft be utilized in an offensive manner. Aircraft should maintain a minimum safe distance from any known hostile elements if a landing becomes necessary.

- i. In case of an aircraft accident, OKCD will initiate an accident investigation. OKFC may be required to provide an investigator to assist and provide liaison to the military investigation team, as required.
- j. When OKCD aircraft are operated from or parked at an airfield other than a military airfield or controlled access civilian airfield, OKFC will assist in providing sufficient security for the aircraft when it is within their jurisdiction to prevent unauthorized access, tampering, or damage to the aircraft.
- k. **MINIMUM ALTITUDES:** All aircrews will adhere to a “fly neighborly” policy. Aircraft are restricted to a minimum operational altitude of 500 feet AGL except during taking off and landing. Descent below 500 feet AGL requires prior approval by the OKNG State Aviation Officer or their designee. If single pilot operations are to be conducted below 500 feet AGL, the law enforcement agent must be trained and current when seated in the front left seat. Descent will be at the discretion of the Law Enforcement Agent on board. Descent will be no lower than 200 feet AGL and upon verification of the reconnaissance objective the pilot must return to a minimum of 500 feet AGL. Sustained flight below 500 feet AGL is not authorized. The PC will be ultimately responsible for the safety aspect of the descent while the LEA is ultimately responsible for the legal aspect.

5-2. TECHNICAL SUPPORT: INTELLIGENCE, TRANSLATION, COMMUNICATIONS, AND OPERATIONAL INVESTIGATIVE SUPPORT.

- a. All intelligence activities must be conducted in accordance with appropriate DoD regulations. OKCD personnel will not conduct activities which involve them directly in covert surveillance deliberately directed at particular individuals.
- b. OKCD personnel will not maintain or store intelligence or investigative final products in National Guard facilities or databases. All intelligence data will remain in the custody of OKFC.
- c. OKCD personnel, as a general rule, will not participate in OKFC or other agency’s internal investigations. The CDC is the approval authority for exemption to this policy.
- d. OKCD intelligence, translator, or investigative support personnel may not participate in off-site location work or field operations without prior approval from the CDC. OKCD translator support will be limited to the transcription

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of pre-recorded tapes or written documents. Translators will not provide “certified” translations for admission in court, take possession of primary source tapes which will be admitted as evidence, sit on or translate active wire taps, or provide translation during criminal suspect interviews.

- e. Communications support is limited to personnel to establish operate and maintain communications stations, bases, and equipment in support of counterdrug operations.
- f. Operational support to OKFC is designed to enhance the effectiveness of OKFC and assigned duties must be consistent with the unique military capabilities of assigned OKCD personnel. This support excludes such tasks as secretarial, janitorial, or receptionist assistance.
- g. OKFC will provide office space and applicable supporting office equipment when OKCD analysts or translators are deployed to OKFC’s regional and task force office(s), sufficient to support the assigned duties of OKCD personnel.
- h. OKFC will be responsible for ensuring work site safety and compliance with all applicable health, safety and hazardous material regulations.
- i. OKCD will ensure a favorable local police check from their current home of record is conducted prior to assignment of any personnel. Additionally, OKCD will attempt to only place personnel with “SECRET” security clearances in sensitive assignments. OKFC maintains the right to perform an independent background investigation at OKFC’s expense for any and all positions they deem necessary.
- j. Due to the sensitive nature of OKFC operations, OKCD personnel assigned to the Fusion Center will wear appropriate civilian attire, but will maintain proper military hygiene standards set forth in AR 670-1.
- k. OKCD personnel will be placed under the supervision of an OKFC agent who is responsible for the daily accountability and performance of the assigned OKCD personnel. If the OKFC has any problems or issues with the assigned OKCD personnel, the supervisor is to contact the CDC as soon as possible in order to allow for corrective actions to be taken.

5-3. TRAINING.

- a. Counterdrug Sponsored Training. Training of OKFC personnel is limited to military subjects and skills useful in conducting counterdrug operations, aircraft safety and employment, operation of specialized military equipment used in counterdrug operations, and other related topics. Authorized training

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includes, but is not limited to basic marksmanship, basic first aid, cover and concealment methods, and land navigation techniques. More advanced law enforcement training should be coordinated with national level counterdrug training sites. Training such as cardio-pulmonary resuscitation (CPR) and advanced military training sniper techniques to certify law enforcement is prohibited. OKFC agents participating in military training are responsible for their own associated travel and per diem expenses.

- b. OKFC training to OKCD Personnel. OKFC may provide training and instruction applicable to counterdrug operations to enhance the skill sets of OKCD personnel. If approved by the CDC, OKCD is responsible for associated travel and per diem expenses of its personnel.
- 5-4. GROUND TACTICAL RECONNAISSANCE AND OBSERVATION. On a case by case basis and when approved by the CDC, counterdrug personnel can reconnoiter or perform area observation by land or water to detect and report illegal drug activities, which include, but is not limited to, cultivated marijuana, suspected isolated drug trafficking airstrips, drug drop zones, drug trafficking corridors, illegal drug labs, suspicious aircraft, watercraft, or motor vehicles. Pursuing or targeting specific persons for surveillance is prohibited.
- 5-5. THERMAL IMAGING SYSTEM (TIS) GROUND, VEHICLE AND AERIAL MOUNTED.
- a. TIS may be used to confirm the location of indoor marijuana cultivation after OKFC has obtained the appropriate level of legal authorization.
 - b. TIS will not be used in random area searches of private property to detect indoor marijuana cultivation sites. TIS will not be employed in a random area search of private property to gather information on suspected drug production sites.
 - c. OKCD is prohibited from keeping or maintaining intelligence, records or files on United States persons. All original tapes, photographs, or other record of information taken during a TIS mission will be given to the OKFC special agent supervisor at the end of the mission.
- 5-6. MARIJUANA ERADICATION SUPPORT. OKCD will provide staffing and equipment to support any OKFC marijuana eradication efforts on a year-to-year basis per annual request outlining the nature and scope of support required, which may include, but is not limited to, training, analyst support, and aviation assets.
- 5-7. DRUG DEMAND REDUCTION (DDR).

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- a. All DDR activities must be conducted in accordance with appropriate DoD regulations and OKCD policies. DDR personnel are prohibited from participating in law enforcement activities that would put them into contact with suspects and place them into a chain of custody without the expressed written consent of the OKCD CDC.
- b. DDR personnel will not exclusively support the OKFC but will support all requesting agencies as directed and assigned by the DDR Administrator (DDRA). DDR personnel supporting specific OKFC drug education activities will require supporting documentation and audience numbers in accordance with OKCD policies and SOPs.
- c. OKFC will be responsible for ensuring work site safety and compliance with all applicable health, safety and hazardous material regulations.
- d. OKCD will ensure a favorable local police record check, from the individual's current home of record, is conducted before assignment to any mission. OKFC maintains the right to perform an independent background investigation, at OKFC expense, for any and all positions they deem necessary.
- e. OKCD DDR personnel will wear an appropriate military uniform during the performance of their assigned military duties.

6. FORCE PROTECTION AND RULES FOR USE OF FORCE.

- 6-1. OKCD personnel will follow the Rules of Engagement and Force Protection as supplemented by applicable state law. Arms and ammunition will only be issued after approval from the Adjutant General and then only for personal protection. When issued, weapons will be secured on individuals at all times. The weapons will be loaded and a round chambered only on the order of the senior military member present. Guardsmen may use force to protect themselves, other members of their team, innocent bystanders or law enforcement officers. Before using deadly force, all lesser means must be exhausted, risk of injury to innocent persons is not increased by the use of deadly force and deadly force is the minimum force necessary to prevent death or serious injury to the Guardsmen, law enforcement officers, or innocent bystander. OKCD personnel will not, except for exigent circumstances, directly participate in the arrest of suspects, conduct searches that include direct contact of OKCD members with suspects or members of the public, or become involved in the chain of custody for any evidence. Exigent circumstances are situations in which immediate action is necessary to protect law enforcement officers, OKCD personnel, or other persons from death, or injury; prevent the destruction of evidence or property; prevent the escape of a suspect already in custody.

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- 6-2. OKCD personnel will be briefed on the need to maintain operational security (OPSEC). Neither OKCD, nor OKFC will disclose the identity of OKCD units and/or personnel conducting counterdrug support operations.
 - 6-3. OKFC will be responsible for ensuring work site security. OKFC will provide a response team if hostile personnel confront OKCD personnel. OKCD personnel will avoid contact or confrontation with civilians and foreign nationals encountered in the area of operations.
7. PUBLIC AFFAIRS.
- 7-1. OKFC will be the lead agency regarding all public affairs (PA) and media concerns. PA and media concerns where OKCD support is involved will be coordinated with the CDC and OKCD PA.
 - 7-2. Operational security is paramount to conducting successful counterdrug operations. OKFC and OKCD will conduct interagency risk analysis prior to the release of information to the media. The purpose of the risk analysis is to protect the identity of OKCD personnel and/or units conducting counterdrug support operations, and prevent disclosure to the media by either agency. OKCD personnel will ensure that public affairs efforts, directed at complying with the right of the public to know, do not jeopardize the safety of OKCD personnel and equipment by disclosing personnel identification in photographs or video recordings by the media. DDR personnel may participate in PA events with other organizations, but will not disclose information related to OKFC without explicit guidance from the OKFC Public Affairs Office and as directed by local agent in charge.
8. SAFETY. Throughout all missions the assigned individual(s) must continuously perform a risk assessment and implement the necessary control measures to prevent unnecessary loss of personnel and equipment.
9. RESPONSIBILITIES (WARRANTS AND PERMITS). OKFC will be responsible for determining the legal basis for searches, inspections and observations. This includes determining the requirement for a search warrant and obtaining such search warrant.
10. RELATIVE LIABILITIES (HOLD HARMLESS AGREEMENTS).
- 10-1. It is agreed that for the purposes of this MOU, the officers, agents and employees of the OKFC shall not be deemed employees of the OKCD for workers compensation, other insurance coverage or for any other purpose. Likewise, the officers, agents, and employees of the OKCD shall not be deemed employees of OKFC for any purpose. The OKNG will be solely responsible for any claims

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arising out of property damage or injuries to, or death of its own employees and agents that occur as a result of the officer, agent or employee's action(s) or omission(s) while that person is in the performance of his/her duty. The OKFC will be responsible for any claim arising out of injuries to, or death of its own agents or employees in accordance with applicable state and federal law.

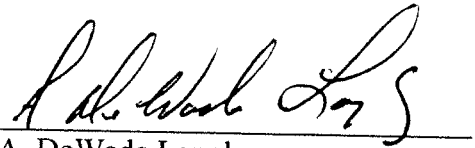
- 10-2. The OKFC agrees to indemnify, defend and hold harmless the OKCD, its members, officers, agents and employees from and against any and all claims, demands, damages, costs and expenses of whatever nature including court costs and attorney fees arising out of or resulting from the negligence of the OKFC, its officers, agents or employees. It is understood that such indemnity shall survive the termination of this agreement.
 - 10-3. To the fullest extent permitted by law, the OKCD Program, its agents and employees will not be considered to be third parties for the purpose of claims or indemnity.
 - 10-4. To the fullest extent permitted by law, the OKFC, its agents and employees will not be considered to be third parties for the purpose of claims or indemnity.
 - 10-5. Support provided by OKCD is provided while its members are performing duties pursuant to authority in federal law under Title 32 of the United States Code. Any and all claims against OKCD for negligence arising from participation or support under this MOU shall be made under the Federal Tort Claims Act.
11. ASSET FORFEITURE AND SHARING. Although OKCD does not currently participate in the federal asset forfeiture program, OKFC supports their efforts in seeking authorization to participate in this program. If approved, assets seized by OKFC as the result of enforcement operations supported by OKCD under this MOU will be forfeited to the extent permitted by federal law. Assets will be shared equitably among the law enforcement agencies whose personnel participated directly in the seizure or forfeitures pursuant to Federal law.
12. RENEGOTIATIONS. Any and all modifications to this MOU must be mutually agreed upon in writing. This MOU will remain in effect while changes or amendments are being coordinated.
13. TERMINATION OF AGREEMENT.
- 13-1. The terms and conditions of this MOU are applicable to OKFC and OKCD in respect to one another. Both parties have the authority to obligate their respective agencies to the provisions of this MOU.

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13-2. This MÔU shall become effective immediately upon being signed by both parties and will remain in effect until terminated by either party, or as described in the support request letter. Annual reviews by OKCD will occur in order to ensure appropriate levels of support.



ROY K. TACKETT
LTC, AV, OKARNG
Counterdrug Coordinator



A. DeWade Langley
OSBI Director
OSBI

17 NOV 08
DATE

Nov. 18, 2008
DATE