



DEPARTMENT OF THE ARMY
JOINT SUPPORT OPERATIONS
405 CAP DRIVE
LONDON, KY 40744

NGKY- JCD

12 March 2014

MEMORANDUM FOR RECORD

SUBJECT: Memorandum of Understanding – Kentucky National Guard and the Lexington Fayette Urban County Government.

1. PURPOSE OF THIS AGREEMENT.

This Memorandum of Understanding (MOU) stipulates policies, procedures, and guidelines regarding the Kentucky National Guard Counterdrug Task Force (KyCDTF) counterdrug (CD) support to the Lexington-Fayette County Division of Police. The mission of the KyCDTF is to assist Federal, State, and Local law enforcement agencies (LEAs), as well as Community Based Organizations, in the elimination of illegal drug activity in the State of Kentucky through education, suppression, and interdiction.

2. REFERENCES.

- a. National Guard Relations (NGR) 500-2/ Air National Guard Instruction (ANGI) 10-801, 29 August, 2008; Subject: National Guard Counterdrug Support
- b. Kentucky National Guard Counterdrug Support Plan.
- c. Department of Defense Directive, Number 5210.56, 1 November 2001; Subject: Use of deadly Force and the Carrying of Firearms by DoD Personnel Engaged in Law Enforcement and Security Duties.

3. STATUTORY AUTHORITY.

The Governor, as Commander-in-Chief of the Kentucky National Guard, in accordance with 32 U.S.C. 112, has authorized the Kentucky National Guard to carry weapons and operate government vehicles to support Federal, State, and Local law enforcement agencies in the interdiction, eradication, and suppression of all illegal drugs and illegal drug activities. This MOU is applicable to KyCDTF personnel providing support to the Lexington-Fayette County Division of Police or a Lexington-Fayette County Division of Police-led Multi-Jurisdictional Drug Task Force (MJDTF) in a U.S. Code Title 32 status, Section 502f, in accordance with the FY 2009 Defense Authorization and Appropriation Act which authorizes and provides funding for National Guard support to civilian Law Enforcement Agency (LEA) CD operations.

4. NATIONAL GUARD MISSIONS.

Kentucky National Guard Counterdrug Task Force (KyCDTF) support will not adversely affect training and readiness to perform other National Guard Federal or State missions as designated by the Adjutant General.

5. COMMAND AND CONTROL.

KyCDTF personnel assigned to support the Lexington-Fayette County Division of Police will be under the tactical control of the Officer in Charge or his designated representative while performing missions in support of the agency. KyCDTF personnel will follow the chain-of-command established by the Lexington-Fayette County Division of Police and abide by its policies and procedures.

6. SCOPE OF OPERATIONS.

The KyCDTF will provide airmen or soldier(s) to the Lexington-Fayette County Division of Police for the purpose of providing administrative, operational, investigative, and/or counterdrug information support. The primary mission will fall under mission category 2B, Investigative Case & Analyst Support, and/or 5A, Surface Reconnaissance.

- a. 2B, Investigative Case & Analyst Support. In accordance with NGR 500-2, personnel working under mission category 2B will assist LEAs in the establishment of counterdrug intelligence system/databases; provide intelligence analysis and operation support designed to enhance the effectiveness of the supported agency and release law enforcement officers for drug enforcement duties; and provide assistance to LEAs in developing investigations and cases for prosecution. Activities include, but are not limited to, inputting, reviewing, and analyzing collected LEA information, and providing legal, paralegal, and auditing assistance. This category of support excludes such tasks as secretarial, janitorial, or receptionist duties.

- b. 5A, Surface Reconnaissance. In accordance with NGR 500-2, qualified personnel working under mission category 5A will execute tasks to support or assist LEAs in the suppression and interdiction of illegal drug activity. Personnel serving in the 5A role will perform operational tasks as designated by the commander of the LEA task force or his designated representative in support of the mission, to include, but not limited to, the reconnaissance or performance of area observation by land or water to detect and report illegal drug activities such as cultivated marijuana, suspected isolated drug trafficking airstrips, drug drop zones, drug trafficking corridors, illegal drug laboratories, suspicious aircraft, watercraft, or motor vehicles.

- c. Mission Requests. All mission requests involving KyCDTF personnel and/or equipment must be requested in writing and approved by the CDC. KyCDTF will be armed at the request of the LEA. This request should be on the initial mission request.
- d. Operational Restrictions and Use of Force.
 - (1) All information activities must be conducted in accordance with appropriate DOD regulations.
 - (2) The National Guard will not maintain or store final products in National Guard facilities or databases. Information gathered by KyCDTF personnel will be reported to the supported law enforcement officer on site.
 - (3) National Guard personnel are prohibited from pursuing or targeting specific persons for surveillance.
 - (4) A law enforcement officer (LEO) must be present or in direct contact with KyCDTF personnel during mission execution.
 - (5) The Posse Commitatus Act (18 USC 1385) does not apply to National Guard personnel on duty under authority of Title 32. As a matter of policy, however, National Guard personnel, will not, except for exigent circumstances or as otherwise authorized in NGR 500-2, O.C.G.A. 2-21, O.C.G.A. 16-3-21, and O.C.G.A. 16-3-22, directly participate in the arrest of suspects, conduct searches which include direct contact of National Guard members with suspects or the general public, or become involved in the chain of custody for any evidence.
 - (a) Exigent circumstances are situations, in which immediate action is necessary to protect or defend police officers, KyCDTF personnel, or other persons from death or injury; to prevent the loss or destruction of evidence or property; or to prevent the escape of a suspect. In these cases, KyCDTF personnel may use only the minimum force necessary.
 - (b) Deadly force may be used only when necessary, that is, when KyCDTF personnel has reasonable belief that the subject poses an imminent danger of death or serious physical injury to the officer or to another person.
 - (c) Deadly force may not be used solely to prevent the escape of a fleeing suspect.
 - (d) Firearms may not be discharged solely to disable a moving vehicle.
 - (e) If feasible, and to do so would not increase the danger to the officer or others, a verbal warning to submit to the authority of the officer shall be given prior to the

use of deadly force.

(f) Warning shots are not permitted.

(g) Officers will be trained in alternative methods and tactics for handling resisting suspects which must be used when the use of deadly force is not authorized.

(6) KyCDTF members are not to be sent or directed into a known hostile environment where information indicates there is a high probability of encountering hostile fire or other life threatening situations.

(7) KyCDTF personnel will not act as the affiant on a search warrant or an arrest warrant; buy drugs or other contraband in an undercover capacity; act alone in providing cover or support in any operation; or engage in high speed pursuits.

(8) KyCDTF personnel approved to carry firearms will carry only authorized KyCDTF assigned weapons in accordance with military qualification standards established by the Kentucky Army National Guard and LEO qualification standards.

(9) Supported LEAs are responsible for obtaining warrants required for searches or for determining the need for searches, inspections, and observations that do not require warrants. This responsibility includes the determination of any potential legal restrictions upon the use of thermal imaging or sense enhancing systems.

7. REPORTING PROCEDURES.

- a. KyCDTF personnel assigned to the Lexington-Fayette County Division of Police will report on a daily basis to the Officer in charge. Hours of operation will be in accordance with the Lexington-Fayette County Division of Police and mission requirements. KyCDTF personnel will complete mission documentation as required by the CDC and submit all documentation in a timely manner through the established KyCDTF channels.
- b. The KyCDTF has statistical reporting requirements to National Guard Bureau, including, but not limited to, number of arrests, type and quantity of drugs and other property seized, and areas where drug activities take place. Personnel with internet capabilities will enter their collected statistical data into the Fulltime Support Management Control System (FTSMCS). Documentation (journal or After Action Report (AAR)) will be forwarded to the KyCDTF Headquarters at Bluegrass Station to be verified by the Intel NCO.

8. SAFETY.

- a. All KyCDTF members will be thoroughly briefed on the Rules For the Use of Force, and safety policy prior to commencement of any operation in accordance with this MOU, NGR 500-2, the KyCDTF Policy and Procedures manual, Operations Orders and the

Standard Operating Procedures. The Counterdrug Coordinator is the approving authority for all Risk Assessments completed for all operations. The KyCDTF member is required to cease operations if safety policy is being violated or he/she feels that the operation/ mission is unsafe.

- b. Report all unsafe scenarios to the safety officer as soon as possible. Each KyCDTF member will have a copy of the pre-accident plan at their work site and will brief their supported agency on its use.

9. FORCE PROTECTION.

- a. KyCDTF personnel and equipment will not be subject to a known hostile fire environment; all terrain must be defensible by civilian law enforcement officers.
- b. If KyCDTF personnel become exposed to a hostile threat or environment, they will disengage and withdraw from the area while giving due consideration to their own safety and that of other law enforcement officers and civilians who may be present.

10. OPERATIONS SECURITY.

- a. The Lexington-Fayette County Division of Police will classify operations and make public information releases.
- b. The Lexington-Fayette County Division of Police will not release information regarding KYNG units, individuals, specific locations, and dates/times about operations unless approved by the Kentucky National Guard Public Information Officer.
- c. The KYNG will not release information regarding Lexington-Fayette County Division of Police units, individuals, specific locations, and dates/times about operations unless approved by the Lexington-Fayette County Division of Police.
- d. Information provided to KyCDTF personnel will not be released except when required by law.
- e. Freedom of Information requests will be referred to the KYNG office for action.
- f. Open records requests will be referred to the Lexington-Fayette County Division of Police office for action.

11. LIABILITIES.

- a. KyCDTF acknowledges that the United States is liable for the negligent or wrongful acts or

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omissions of KyCDTF personnel, while acting on active duty in Title 32 status, to the extent permitted by the FTCA, 28 USC sections 2401 and 2671-2680. Any claim by third parties for personal injury, death, or property damage allegedly caused by KyCDTF personnel, will be processed through KyCDTF legal channels.

- b. The Lexington-Fayette County Division of Police acknowledges that the Lexington-Fayette Urban County Government is, to the extent provided by Kentucky law, liable for the negligent or wrongful or omissions of its agents and employees.
- c. Responsibility and liability for loss and damage of KyCDTF equipment will be determined by a Financial Liability Investigation for property loss.

12. ASSET FORFEITURE/SHARING.

To the extent permitted by law, KyCDTF will be given consideration for all asset seizure actions based on participation. Amounts will be determined on a case-by-case basis for the Lexington-Fayette County Division of Police.

13. EFFECTIVE DATE.

- a. This agreement shall commence upon its execution by both parties. This agreement shall remain effective two years from the date signed, unless terminated early by either party by advance written notice within 30 days to the other party.
- b. Revisions, amendments, and modifications to this MOU may be made upon the approval of all agencies, and shall become effective upon the date of approval, unless otherwise specified.
- c. Renegotiation of this agreement must take place when laws, regulations, or support requirements change in such a manner that the agreement cannot be executed.

JSO-CD-CDC

SUBJECT: KYNG Support to CD Operations – MOU Between the KyCDTF and Lexington-Fayette County Division of Police

- d. Lexington-Fayette County Division of Police understands that continuation of the support agreed to by the KYNG in this document is contingent upon congressionally appropriated fiscal year funding allocations.

EDWARD W. TONINI
Major General
The Adjutant General

JIM GRAY
Mayor
Lexington Fayette Urban County Government

Date

Date



RONNIE BASTIN
Chief
Lexington Division of Police

5-23-14
Date