



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
MASSACHUSETTS NATIONAL GUARD
OFFICE OF THE ADJUTANT GENERAL
50 MAPLE STREET
MILFORD, MA 01757-3604

REPLY TO
ATTENTION OF:

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MASSACHUSETTS NATIONAL GUARD, COUNTER-DRUG SUPPORT
OPERATIONS
AND
THE COMMONWEALTH FUSION CENTER

SUBJECT: Massachusetts National Guard Analyst for (MSP) Commonwealth Fusion Center

1. PURPOSE. To establish policies, procedures, and guidelines governing the utilization of Massachusetts National Guard (MA-NG) and Department of Defense (DOD) resources in support of the Commonwealth Fusion Center for counter-narcotics analysis operations in the state of Massachusetts.

2. REFERENCES.

- a. Section 112, Title 32, United States Code (32 USC 112) is the authority of the Counterdrug Support Program
- b. National Guard Regulation (NGR) 500-2/ANGI 10-801 dated March 2000.
- c. Governor's State Plan, (required annually)
- d. Massachusetts Tort Claims Act

3. SITUATION. The Commonwealth of Massachusetts has requested the Massachusetts National Guard to provide the Commonwealth Fusion Center with an enhanced ability to analyze narcotics and related crime data that includes the use of Massachusetts National Guard personnel for drug intelligence analysis duties. By order of the Governor of the Commonwealth of Massachusetts National Guard personnel will be employed on Active Duty Special Work (ADSW) orders under 32 USC, 502 (f).

4. SCOPE OF OPERATIONS. The scope of duties of the National Guard soldier assigned to The Commonwealth Fusion Center is limited to those duties delineated by NGR 500-2/ANGI 10-801, Mission 2b, Intelligence Analyst Support. NGR 200-2/ANGI 10-801 provides the authority for National Guard personnel to assist in the establishment of counterdrug intelligence systems/data bases and provide intelligence analysis support. All intelligence activities must be conducted in accordance with the appropriate DOD regulations. The National Guard will not maintain or store final products in National Guard facilities or databases.

5. UNDERSTANDINGS, AGREEMENTS, SUPPORT, RESOURCES NEEDED.

- a. Deployment of National Guard personnel or equipment.

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(1) Massachusetts National Guard personnel may be deployed in any support capacity which does not violate federal, state or local laws, other provisions of this memorandum, and furthers the objectives outlined in NGR 500-2/ANGI 10-801 and the Governor's State Plan.

(2) An official written request for support must be submitted to initiate a mission. When continuous support operations are renewed from year to year with the same agency, a request for continuation is required, before the start of the new fiscal year.

(3) All requests for personnel will include a job description and daily routine.

(4) All requests for personnel are contingent upon:

(a) Funding being available.

(b) The requested job description matching the soldier/airman Military Occupation Skill (MOS).

(5) Massachusetts National Guard analyst assigned to the Commonwealth Fusion Center can provide case support for agencies located outside the Commonwealth of Massachusetts providing that:

(a) The supported agency makes an explicit request for case support to the Fusion Center located in Framingham, MA and the National Guard member providing the support is currently assigned to the Commonwealth Fusion Center.

(b) The National Guard member's permanent physical location is maintained inside Massachusetts.

(c) All supported cases originating outside the Commonwealth of Massachusetts must have a reasonable impact on the trafficking, price, and/or availability of drugs inside Massachusetts.

b. Reporting Procedures and Reports.

(1) The Counterdrug office provides a reporting document, the Counterdrug Management Information System (CMIS), to all Counterdrug personnel assigned to the Fusion Center. The report contains various fields that may or may not pertain to specific cases however, it is a mandatory requirement, and may be faxed to (508) 233-6831, or mailed to Massachusetts National Guard 50 Maple St., Milford, MA 01757 ATTN: CSO, by close of business every Thursday.

(2) Additional reports include:

(a) Copies of news media articles pertaining to arrests and seizures associated with the operations involving National Guard support.

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(b) Copies of initial reports of major accidents or injuries, or serious incidents involving National Guard personnel or equipment.

(c) Personnel evaluations.

(d) Statistical results (i.e. Seizures, arrests) and other information concerning operational activities for inclusion in MA National Guard reports.

c. Command and Control.

(1) Massachusetts National Guard personnel employed in support of the Commonwealth Fusion Center will be directly responsible to and under the command of their military chain of command.

(2) Fusion Center officers will neither command nor direct military personnel. but may provide guidance relative to the general or specific mission to be accomplished.

(3) The duty day for all National Guard personnel assigned to the Fusion Center will be submitted to the Counterdrug Support Office for approval and made part of this MOU/A.

(4) All requests for leave of the National Guard personnel will be coordinated with the Counterdrug Operations Officer.

(5) All Annual Training days will be coordinated with the Counterdrug Operations Officer.

(6) Sick call will be handled through Hanscom AFB clinic. All sick days require notification to the administration section of the Counterdrug Operations (508) 233-6825.

(7) Uniform during the duty day is at the discretion of the supported agency.

(8) Prior to deployment for each mission, all MA-NG personnel will be briefed by the CSO operations officer (or his designee) on the following:

(a) The Mission.

(b) The current situation of the area of operations.

(c) Operational Security.

(d) Standards of Conduct.

(e) Responses to press inquiries.

(f) Force protection.

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(g) Posse Comitatus.

(h) Rules for Use of Force (RUF)

(9) Fusion Center personnel will be briefed as to the role, command and control, and permissible actions of the supporting military personnel.

d. Force Protection and Rules for Use of Force.

(1) Imminent Danger Situations.

(a) MA-NG personnel always retain the inherent right of self defense.

(b) The role of the National Guard is to support the Commonwealth Fusion Center. National Guard personnel will not be placed in situations that are likely to bring them in direct contact with suspects. National Guard members will not knowingly be sent or directed to enter into a hostile environment where information indicates there is a high probability of encountering hostile fire or other life threatening situations.

(2) Arms and Ammunition.

(a) MA-NG personnel may be armed in accordance with the provisions of NGR 500-2/ANGI 10-801 Chapter 3 Para 3-6.

(b) Only National Guard weapons and ammunition will be issued to and carried by National Guard personnel. Personally owned firearms will not be carried.

(3) Deadly Force. Deadly Force is authorized when the soldier reasonably believes that the following conditions exist:

(1) He/she or another is at risk of death or serious bodily harm likely to result in death.

(2) Lesser means have been exhausted, are unavailable, will not counter the threat, or will cause a greater threat to public safety than deadly force.

(3) The risk of death or serious bodily harm to innocent bystanders is not significantly increased by its use;

(4) The purpose of deadly force is one or more of the following situations:

(a) Self-defense or defense of others to avoid death or serious bodily harm likely to result in death.

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(b) Detention or prevention of the escape of a person who, during detention or while escaping, presents an imminent danger of causing death or serious bodily harm likely to result in death to another person.

(c) Prevention of a terrorist attack.

(d) Prevention of the destruction of critical infrastructure vital to public health or safety if such destruction would imperil life. Such infrastructure includes but is not limited to destruction of dams, nuclear power facilities and similar facilities.

e. Public Affairs Support.

(1) It is recognized that support to counterdrug operations can generate considerable news interest. While it is important for the general public to be aware of the role of the NG in drug Support, balancing safety and security concerns dictate that caution be exercised in publicizing Guard support of sensitive drug operations.

(2) Guidelines.

(a) News releases that discuss MA-NG participation will be coordinated with the MA-NG public affairs officer.

(b) At no time will the National Guard personnel or specific units be identified in missions mentioned in the above paragraph "(a)". Similarly, photographs or video taken by news media during or after a mission will not show nametags or facial view of Massachusetts National Guard soldiers. To the extent consistent with requirement of prosecution in court cases and applicable law, the identities of National Guard personnel involved in operations will be protected from disclosure outside the National Guard.

(c) Responses to inquiries will indicate no more than that Massachusetts National Guard members have assisted law enforcement authorities.

(d) News media personnel will not be allowed to accompany guard members during counterdrug operations.

(3) The Commonwealth Fusion Center will be the office of record for all information gathered during an operation.

f. 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.

g. Responsibilities.

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(1) National Guard:

(a) Personnel will not release operational information as to units, individuals, specific locations, dates and times in reference to an upcoming operation unless specifically authorized by The Adjutant General of MA and the Commonwealth Fusion Center.

(b) Will ensure that personnel assigned to the Fusion Center are performing tasks that are directly related to their MOS and within permitted scope of NGR 500-2.

(c) Will be responsible for maintenance of the requisite security clearances of personnel assigned to the Fusion Center

(d) Will provide for all authorized Pay and Allowances, Leave Pay, Per Diem, travel expenses, mileage reimbursement, and any other authorized financial support of National Guard personnel IAW military regulations, National Guard Counterdrug Support Policy and as directed by the CDC.

(e) Will ensure provision for tuition and school expenses for any training required by the National Guard and not required by the Commonwealth Fusion Center.

(f) Will conduct in-house maintenance to technical equipment.

(2) Commonwealth Fusion Center:

(a) Will provide input to all required reports as referenced in section 5b and consistent with the requirements of the Privacy Act.

(b) Will provide tuition and materials for any required training as necessary to accomplish stated tasks.

(c) Will not move any personnel into any other position within its agency, without 21 days written notice to the Counterdrug Coordinator. Moving personnel without approval of the CDC could effect the employment of the National Guard Soldiers within the Fusion Center.

g. Relative liabilities.

(1) Tort Liability- Massachusetts National Guard personnel engaged in Counterdrug support operations pursuant to Title 32 of the United States Code are federal employees for purposes of the Federal Tort Claims Act. In certain situations, not deemed to be within the scope of duties afforded protection by the Federal Tort Claims Act, but deemed to be within the scope of duties as members of the Armed Forces of the Commonwealth of Massachusetts, MA-NG personnel are entitled to the protections and immunities afforded by Chapter 258 of the Massachusetts General Laws (Massachusetts Tort Claims Act).

(2) Property Damage.

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(a) Both parties agree to contact the other party as soon as possible to report damage caused to the equipment of the other. To the extent permitted by the Federal Tort Claims Act, the Massachusetts Tort Claims Act, and other applicable laws and regulation, each party acknowledges its liability for damage to equipment of the other party, caused by the actions or omissions of the borrowing party's agents and employees, while acting within the scope of their employment.

h. Chain of Custody- Except in exigent circumstances, MA National Guard personnel will not be involved in handling of custody of evidence.


6. EFFECTIVE DATE.


a. This agreement becomes effective upon signature of all parties concerned and as stated on the signature page. This agreement commences on 1 January 2006 and will be reviewed annually by both parties to ensure accuracy.

b. This MOU/A may be renewed by providing a request for continuation to the CDC prior to the beginning of the new fiscal year as stated in Paragraph 5.a.(2)., and, pending available funding. Additionally, the job requirements and the National Guard soldier must not have changed.

c. This MOU/A shall remain in effect unless terminated in writing by either party. Termination shall be effective 30 days from the date of the written notice.

7. ASSET FORFEITURE (N/A).


Oliver J. Mason Jr
Brigadier General
The Adjutant General


Thomas G. Robbins
Colonel
Massachusetts State Police



Massachusetts State Police Written Agreement Sign-Off Sheet

Proposed Agreement	MOA - NSTAR GAS & ELECTRIC		
Participating Agency	NSTAR		
Date Submitted	5/10/05	Time Sensitive	

Submitting Officer Rank/Name/ID#	PAUL CONNERY C633		
Division	DFS	(DIS)	DST DAS
Duty Assignment	CIS Fusion Center		

Troop/Section/Unit Commander			
Signature:	Date Forwarded to Division Commander: 6/13/05		
Approved	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Additional Information Needed <input type="checkbox"/> Yes
RECOMMEND APPROVAL Comments:			

Division Commander			
Signature:	Date Forwarded to Legal Section: 6/13/05		
Approved	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Additional Information Needed <input type="checkbox"/> Yes
Reviewed by Chief Administrative Officer	<input type="checkbox"/> Yes	<input type="checkbox"/> No	CAO Signature:
Comments:			

Legal Section			
Signature:	Date Forwarded to Superintendent: 6/14/05		
Approved	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	Additional Information Needed <input type="checkbox"/> Yes
Please forward a signed copy to legal for filing. Thx!			

MEMORANDUM OF AGREEMENT

This Memorandum of Agreement (MOA) is being entered into with **NSTAR Electric & Gas Corporation** for the purpose of exchanging information related to Critical Infrastructure Protection in the Commonwealth.

I. Purpose:

To establish procedures and responsibilities for employees of the Commonwealth Fusion Center and **NSTAR Electric & Gas Corporation** related to Critical Infrastructure Protection and Information Sharing.

II. Policy:

It is the policy of the Commonwealth Fusion Center to keep confidential all information submitted to it by participating partner organizations and agencies as specified by **exemption (n)** to the Massachusetts Public Records law, G. L. c. 4, § 7(26).

Exemption (n) applies to:

“records including, but not limited to, blue prints, plans, policies, procedures and schematic drawings, which relate to internal layout and structural elements, security measures, emergency preparedness, threat or vulnerability assessments, or any other records relating to the security or safety of persons, buildings, structures, facilities, utilities, transportation or other infrastructure located within the commonwealth, the disclosure of which, in the reasonable judgment of the custodian, subject to review by the supervisor of public records under subsection (b) of section 10 of chapter 66, is likely to jeopardize public safety.”

Under exceptional circumstances (e.g. imminent, credible and specific threat), critical infrastructure information provided to the Commonwealth Fusion Center may be shared with other entities involved in addressing or mitigating the threat, on a strictly need to know basis.

Information provided to the Commonwealth Fusion Center may also be used, as necessary, as background information in the development of other intelligence products. It is the policy of the Commonwealth Fusion Center to protect the integrity of sensitive information and to restrict disbursement of such information strictly to a need-to-know audience.

It is important to note that providing safety and/or threat related information to the Commonwealth Fusion Center does not obviate the need for partner organizations and agencies to comply with existing regulatory reporting requirements.

III. Procedure

All information shared by NSTAR Electric & Gas Corporation with the Commonwealth Fusion Center in the context of Critical Infrastructure Protection will be treated by the Commonwealth Fusion Center as exempt from the Massachusetts Public Records law, pursuant to G. L. c. 4, § 7(26)(n) (Exemption (n)).

The Commonwealth Fusion Center is committed to working with its partner organizations and agencies within the framework of Critical Infrastructure Protection. As such, the Commonwealth Fusion Center will distribute information to partner organizations and agencies, as needed, with due respect to limitations imposed by public safety interests.

It is the goal of the Commonwealth Fusion Center to receive Critical Infrastructure Information as expeditiously as possible. To that end, the Commonwealth Fusion Center is open to receiving information from its partner organizations and agencies in whatever form proves most expedient. Whenever possible, electronic format is preferred.

IV. Duration

This MOA shall remain in effect indefinitely. This agreement may be changed or modified by written consent of all involved parties. Both parties will review this agreement every two years.

V. Amendment

Modifications or amendments to this Agreement shall be in writing and duly executed by both parties to be effective.

VI. Terms

This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of the Agreement shall be deemed to exist or to bind either of the parties hereto. This Agreement will become effective when signed by all parties.

VII. Termination

Either party may terminate this MOA by providing 30 days written notice to the other.

VIII. Severability

If any provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions of this Agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the

fundamental purpose of the Agreement, and to that end the provisions of this Agreement are declared to be severable.

IX. Jurisdiction

This MOA shall be governed by the laws of the State of Massachusetts but without regard to any conflict of laws principles which would make the laws of any other jurisdiction applicable to the Agreement.

In WITNESS WHEREOF, each party hereto has caused this agreement to be executed in its name and on its behalf by its duly authorized officer or agent as of this day and year set forth below.

DATED this 20th day of June, 2005.

DEPARTMENT OF STATE POLICE

A handwritten signature in black ink, appearing to read "T. Robbins", written over a horizontal line.

Colonel Thomas G. Robbins

and

NSTAR ELECTRIC & GAS CORPORATION

Richard J. Morriss
Clerk + Ass. General Counsel