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Report to the Special Subcommittee
of Government Operations, Committee on
Government Operations, House of
Representatives

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DEPARTMENT OF JUSTICE

Use of National Crime
Investigation Center
Drug Services



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The Honorable Robert E. Wise, Jr.
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives

Dear Mr. Chairman:

This report responds to your December 27, 1989, request that we review the use of National Guard aircraft to fly counter-drug missions. You expressed concern that using National Guard helicopters may unfairly displace commercial operators who had previously performed such services.

The specific objectives of our review were to determine whether (1) it is more economical for the U.S. government to have states use National Guard helicopters rather than contract for commercial helicopters to fly counter-drug missions, (2) cost comparisons on the use of commercial versus government aircraft are being conducted in accordance with Office of Management and Budget (OMB) Circular A-126, and (3) such analyses have been submitted as part of each state's justification for using National Guard helicopters. After consulting with your staff, we limited our review to three states—West Virginia, Hawaii, and California.

Results in Brief

For the three states we visited, we could not determine for fiscal year 1990 whether it was more economical for the government to have states use National Guard helicopters instead of commercial helicopters for counter-drug missions. We were told that, in fiscal year 1990, National Guard units in the states did not increase their flying-hour program to fly counter-drug missions; rather, the hours flown were absorbed within the units' approved flying-hour program. Neither the units nor the National Guard Bureau could provide data to document this assertion; however, if correct, it appears that the government incurred no added costs for using National Guard helicopters for these activities. The government would have incurred added costs if commercial operators had been hired to perform these activities.

For fiscal year 1991, however, the use of National Guard helicopters for counter-drug missions may result in added costs to the government.

National Guard Bureau officials stated that they have preliminarily set aside 38,244 flying hours to support counter-drug missions; however, data was unavailable to determine whether the set-aside hours were within, or in addition to, the National Guard's normal flying-hour program. If these flying hours are in excess of what the National Guard would have flown without a counter-drug mission, then using National Guard helicopters for counter-drug activities will be an added cost to the government. However, determining cost effectiveness must be done on a case-by-case basis, and would depend on such factors as the type of mission flown, the type of military helicopter used, and the price quoted by commercial operators for the specific mission.

The Department of Defense (DOD) Authorization Act for fiscal years 1990 and 1991 does not specifically require that cost analyses be prepared to determine the cost effectiveness of using commercial or government aircraft for drug surveillance and eradication. Also, OMB Circular A-126 does not apply to the use of National Guard helicopters for drug surveillance and eradication that are conducted pursuant to section 1207 of that act. The circular applies to federal executive agency activities and not to state law enforcement activities. National Guard helicopters are in state rather than federal status while being used for counter-drug operations, and are used in support of state counter-drug activities; thus, no cost analysis was submitted as part of each state's justification for using National Guard helicopters.

Background

DOD's appropriations for fiscal year 1990 specifically earmarked \$110 million for the National Guard to perform counter-drug missions. Section 1207 of the DOD Authorization Act for fiscal years 1990 and 1991 authorizes DOD to provide funding to state governors to use National Guard resources to support drug interdiction and other counter-drug activities. The states can also use these funds to procure services and lease equipment for drug interdiction and other counter-drug activities.

To qualify for funding, a governor must submit a plan to DOD that (1) specifies how National Guard personnel will be used, (2) certifies that counter-drug operations will take place at a time when the National Guard personnel are in state rather than federal status, and (3) certifies that participation by National Guard personnel in these activities is service in addition to minimum annual training requirements.

Law enforcement agencies in the three states we visited rely heavily on National Guard resources to fly counter-drug missions. Before passage

of the DOD Authorization Act for fiscal years 1990 and 1991, however, law enforcement agencies in the three states generally obtained these services from commercial aircraft operators financed through Drug Enforcement Agency grants.

Cost Effectiveness of Using National Guard Rather Than Commercial Helicopters Is Unknown

Using National Guard helicopters to fly counter-drug missions in California, Hawaii, and West Virginia did not appear to increase expenses incurred by the U.S. government in fiscal year 1990. However, this may not be the case in fiscal year 1991.

State flying-hour programs approved by the National Guard Bureau normally consist of a certain number of hours to meet minimum training requirements, and additional flying hours as requested by the states. The DOD Authorization Act for fiscal years 1990 and 1991 requires that any counter-drug hours flown must be in addition to the minimum training hours. According to National Guard officials in the states we visited, their pilots met the minimum flying-hour requirement and their counter-drug missions were within the total approved flying-hour program in fiscal year 1990.

While we were told that flying counter-drug missions will not cause the National Guard in these states to fly hours in excess of those already programmed in fiscal year 1990, data to verify this statement was not available. The National Guard Bureau does not maintain flying-hour information necessary to verify how their flying-hour allotment was used. We could not verify that the training hours beyond the minimum required would have been flown without the counter-drug activities, nor could we verify that DOD would have funded the additional hours without the funds earmarked for counter-drug activities by the fiscal year 1990 DOD Appropriations Act. Beginning in fiscal year 1991, the National Guard Bureau will be able to make these determinations. Officials stated that the Bureau will maintain a database of hours flown in support of counter-drug activities.

National Guard Bureau officials stated that they have preliminarily set aside 38,244 flying hours in fiscal year 1991 for counter-drug missions. If the flying-hour program is expanded to accommodate any portion of the 38,244 flying hours, it appears that, unlike fiscal year 1990, using National Guard helicopters for counter-drug activities will be an added cost to the government.

DOD Authorization Act Does Not Require Cost Analyses

The DOD Authorization Act for fiscal years 1990 and 1991 does not specifically require that comparisons of operating costs of National Guard and commercial aircraft be a condition for DOD funding of National Guard counter-drug flying missions. State governors are required to submit a plan to DOD to qualify for such funding, and DOD must examine the adequacy of each plan before funds are provided. However, requirements in the act regarding the contents of the plans (e.g., description of how National Guard personnel will be used) do not indicate that a cost comparison should be made. The legislative history of the act also does not indicate that any such requirements were intended.

Without a specific requirement in the act to do so, no cost analyses are currently being performed as part of the states' counter-drug plans.

OMB Circular A-126 Does Not Apply

OMB Circular A-126 requires federal executive agencies to perform comparisons of the operating costs of government and commercial aircraft to determine whether a mission can be performed more cost effectively by the private sector. This circular requires each federal agency using government aircraft to justify and document the decision to use government resources in cases where commercial aircraft are readily available.¹ According to OMB officials, the circular does not require cost comparisons in cases where aircraft are used to fly drug surveillance and eradication missions. Officials from the Helicopter Association International, the trade association of helicopter operators, stated that they believe that OMB Circular A-126 does apply when aircraft are used for such missions.²

Based on our analysis of OMB Circular A-126 and discussions with OMB officials, we believe A-126 does not apply to the use of National Guard aircraft for counter-drug activities that are conducted pursuant to section 1207 of the DOD Authorization Act for fiscal years 1990 and 1991. OMB Circular A-126 prescribes policies to be followed by federal executive agencies when using government aircraft to ensure that these agencies rely on commercial aircraft services to meet their passenger and cargo transportation needs where possible and cost effective. The circular clearly requires that government aircraft shall be used only when

¹Circular A-126 sets forth the government's general policy for agencies' use of commercial aircraft for the transportation of people or cargo. Circular A-126 refers to OMB Circular A-76 to determine the cost effectiveness of using government or commercial aircraft for such purposes.

²Association members fly approximately 75 percent of the total hours flown by all U.S. commercial operators.

it is more cost effective than using commercial aircraft, or when commercial aircraft are not available to effectively meet an agency's transportation needs. The circular requires that the use of government aircraft be justified and documented, and that a cost comparison be made on the use of government versus commercial aircraft.

The circular, by its terms, applies to the use of government aircraft by federal executive branch agencies. In our opinion, the use of National Guard aircraft while in state status for state counter-drug purposes is not an activity of a federal executive agency. Such National Guard activities are generally conducted at the request of state law enforcement agencies and are incorporated into the state's plan subject to approval by the Secretary of Defense. However, the activities are intended to assist state governments in their drug enforcement efforts and do not constitute a federal activity. This is supported by the DOD Authorization Act of 1990 and 1991, which specifically requires that a governor requesting DOD funding must certify that the counter-drug operations are to be conducted at a time when National Guard personnel involved are in state rather than in federal status.

If OMB Circular A-126 were made to apply to the use of National Guard helicopters for state counter-drug activities, DOD's system for accumulating and reporting costs would require some modifications. Currently, DOD's flying hours cost figures cannot be used for comparison with commercial helicopter figures because they do not conform with cost criteria specified by the circular. These criteria call for the comparison of cost elements not currently reported, such as crew overtime, overhaul salaries, landing fees, and aircraft lease variables. Officials at the U.S. Army Cost and Economic Analysis Center, which maintains cost data for National Guard helicopters, stated that they have never performed cost comparisons for helicopters according to Circular A-126 and are not sure what would be required or how long it might take to extract the data necessary to perform such a comparison.

The variable costs currently available from DOD for National Guard helicopters differ by the type of helicopter used (see table 1), but these costs cannot be used for comparisons according to Circular A-126 because they do not include certain cost elements required by the circular for a proper comparison.

Table 1: National Guard Helicopter Variable Costs

Type	Hourly cost
OH-6	\$323
OH-58 A/C	379
UH-1	515
OV/RV-1	1,133

Differing Opinions on the Use of National Guard Versus Commercial Aircraft

Law enforcement officials in the three states we visited told us that they increasingly use National Guard helicopters because they incur no cost as they do when using commercially available helicopters. If the law enforcement agencies use grant funds to lease commercial aircraft, they have less money for other drug-related activities. If commercial helicopters are used, the state and local law enforcement agencies pay the contractor, typically using Drug Enforcement Agency grant funds. When the National Guard helicopters are used, DOD pays the National Guard Bureau; state and local law enforcement officials are not involved in these financial arrangements.

Officials at the Helicopter Association International contend that using National Guard aircraft for drug surveillance and eradication unfairly displaces commercial operators who had previously received contracts for such activities. They believe that Association members can provide such service at a lower cost to the government than the cost incurred by using National Guard aircraft, and contend that state law enforcement agencies have no incentive to seek the lowest cost when deciding where to obtain helicopter services.

Law enforcement agencies in the three states we visited had mixed opinions about the desirability of using the National Guard instead of commercial services. For example, law enforcement agency officials in West Virginia prefer to use the National Guard because of safety reasons, and, in their opinion, the National Guard helicopters are more appropriately equipped for such activities. Law enforcement officials in Hawaii told us that they prefer National Guard helicopters for surveillance activities but prefer commercial helicopters for eradication activities because commercially available helicopters were able to land in places where the National Guard helicopters could not.

Scope and Methodology

To obtain information on the laws and policies governing the use of National Guard resources in counter-drug activities, we analyzed pertinent legislation authorizing the use of National Guard resources for counter-drug missions, reviewed OMB circulars governing the use of government and commercial aircraft, and met with officials from the DOD, National Guard Bureau, and OMB. We obtained and reviewed pertinent documents, such as state drug eradication plans approved by DOD, as well as government and commercial cost methodologies.

We limited our review to three states—West Virginia, California, and Hawaii. We selected West Virginia because of your concerns about the use of National Guard resources in that state. We added California and Hawaii because both are large marijuana growers, and the National Guard is extensively involved in drug surveillance and eradication there. We interviewed officials from the West Virginia Army National Guard and West Virginia State Police, and a commercial aircraft operator. We spoke with officials from the Hawaii Army National Guard and Hawaii County Police Department, as well as with a commercial aircraft operator, to obtain their views. In California, we met with officials from the Army National Guard.

We met with officials from the Helicopter Association International to discuss their concerns and to obtain information on past and present involvement of commercial aircraft in counter-drug activities.

We conducted our review between February and April 1990 in accordance with generally accepted government auditing standards.

As requested, we did not obtain written agency comments. However, we did discuss the information in this report with DOD and OMB officials, and have incorporated their comments in the report where appropriate. As agreed with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from the date of this letter. At that time, we will send copies of this report to the Secretary of Defense, the Director of the Office of Management and Budget, and to other interested parties upon request.

Major contributors to this report are listed in appendix I. If you have any questions or need additional information, please call me on (202)275-5790.

Sincerely yours,



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