

STATE OF COLORADO

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

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Policy Letter: DMVA 500-2

Effective Date: 01 January 2008

Summary: Provides Standards and Procedures for use of assets provided to the Colorado National Guard through the Federal Asset Forfeiture Program

Establishes Forfeiture Fund Board

Applicability: All CONG and Employees of DMVA

Staff Proponent: Director of Counterdrug Operations

Supercedes: New

Official:

H. Michael Edwards, Maj Gen COANG
The Adjutant General

Distribution: TAG
Deputy Director, DMVA
DMVA Controller
Counterdrug Coordinator

Counterdrug Asset Seizure Program

- 1. Purpose:** The purpose of this policy is to establish standards and procedures for the application, acceptance and use of assets provided to the Colorado National Guard from the federal asset forfeiture program as a result of counterdrug support provided to civil law enforcement agencies in accordance with 32 USC 112 and the Governor's National Guard Counterdrug Support Plan.
- 2. Background:** Pursuant to the Comprehensive Crime Control Act of 1984, the United States Attorney General has discretionary authority to share the proceeds from federally forfeited property with state and local law enforcement agencies. Colorado Revised Statute (CRS) 16-13-601 and 28-3-1303 (2) designate the Colorado National Guard (CONG) a law enforcement agency for the limited purpose of participating in the Federal Asset Forfeiture Program. This allows the CONG to apply for an equitable share of federally forfeited assets that are seized as a result of criminal drug investigations supported by the CONG Joint Counterdrug Task Force (CO JCDTF).
- 3. Application for Sharing of Seized Assets:** The federal asset forfeiture program is administered through two departments of the United States Government, Justice and Treasury. Applications made to the Department of Justice (DOJ) will be accomplished in accordance with DOJ publication: 'A Guide to Equitable Sharing of Federally Forfeited Property for State and Local Law Enforcement Agencies' dated March 1994 (Justice Guide). Applications to Department of Treasury (DOT) will be made in accordance with the DOT publication: 'Guide to Equitable Sharing for Foreign Countries and Federal, State, and Local Law Enforcement Agencies' dated April 2004 (Treasury Guide). All applications will be made in coordination with the supported law enforcement agency(s) involved in the seizure of the assets to be shared.
- 4. Acceptance of Assets:** Assets will normally be distributed in the form of cash funds after seized property is liquidated. It is unlikely that CONG will request equitable sharing in the form of tangible property. Funds will normally be transmitted to the Colorado Department of Military and Veterans Affairs controller in the form of electronic fund transfer (EFT) or a check to be deposited in the Adjutant General's Federal Forfeiture Fund. When the forfeited assets are transmitted to the State, they become State assets. The disposition and accounting of these assets will be in accordance with State practices and standards, in compliance with federal law and consistent with the DOJ and DOT guidelines addressed in paragraph 3. Per Colorado Revised Statute 28-3-1305 any funds derived from seizures are to be deposited into the DMVA Counterdrug Program Federal Forfeiture Fund in the State Treasurer's Office.
- 5. Forfeiture Fund Board:** There is hereby established the Adjutant General's Federal Forfeiture Fund Board. It will be chaired by the CONG Counterdrug Coordinator (CDC) and consist of at least five voting members including at least two senior civilian law enforcement officials, a representative of the Colorado substance abuse prevention community, the CDC, and a representative of the Colorado Department of Military and Veterans Affairs (DMVA). The CONG counterdrug budget officer/NCO will attend Board meetings in a non-voting status and act as the Board secretary. The Board shall meet at the call of the Chairman. No expenditure of funds or disposition of assets shall take place without the prior approval of a majority vote of the Board.

6. **Use of Assets:** Use of all assets received under the federal asset forfeiture program will be in accordance with the permissible uses listed in the Treasury Guide and the Justice Guide. Priority of use will be to support Colorado law enforcement agencies supported by CO JCDTF and to support drug education and awareness programs in Colorado. Any use not specifically defined as permissible in the Treasury Guide or the Justice Guide will be referred to the appropriate federal official charged with the administration of shared assets in Colorado, i.e. the United States Attorney for Colorado, for concurrence before any funds are expended. Approval authority for expenditure of funds and disposition of property provided to the CONG by the federal asset forfeiture program is the Counterdrug Coordinator and the Forfeiture Fund Board.
7. **Reporting Requirements:**
 - a. Federal Annual Certification Report – A Federal Annual Certification Report is required to certify to the federal government that use of the assets is consistent with applicable standards and conditions. The report is required within sixty days of the end of the Colorado fiscal year. The appropriate form is available in Appendix A.3 in the Treasury Guide or at www.eoaf.treas.gov. A copy of this report will also be provided to the Colorado controller by 1 October each year in accordance with CRS 24-75-212.
 - b. Annual Audit – The Office of the State Auditor may perform an annual audit in accordance with the Single Audit Act Amendments of 1996 and OMB Circular A-133. A copy of the report will be sent to the Department of the Treasury Executive Office for Asset Forfeiture upon completion.
8. POC for this policy is the Counterdrug Coordinator, (720)847-8458.