

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System (IPS)**

OFFICE OF INVESTIGATIONS DIRECTIVE

**PROPOSING DIVISION/UNIT: Smuggling and Public Safety Division/
Contraband Smuggling Unit**

DISTRIBUTION:	OI
DIRECTIVE NO.:	OI DIR 05-006
ISSUE DATE:	05/03/2005
EFFECTIVE DATE:	05/03/2005
REVIEW DATE:	05/03/2008
SUPERSEDES:	See Section 3.

**DIRECTIVE TITLE: PERSONNEL DESIGNATED TO ACT AS CUSTOMS
OFFICERS (EXCEPTED) FOR INVESTIGATIVE
PURPOSES**

1. PURPOSE and SCOPE. To provide comprehensive guidelines regarding the designation of other Federal, State, and local law enforcement officers to perform the duties of a Customs Officer (Excepted) for investigative purposes when this designation is in the best interest of the U.S. Immigration and Customs Enforcement (ICE). This Directive is not for use in the designation of foreign law enforcement officers as Customs Officers. It does not grant the designated Customs Officers the authority to enforce any laws and regulations previously enforced by the former Immigration and Naturalization Service (INS).

2. AUTHORITIES/REFERENCES.

19 U.S.C. 1401(i).

Homeland Security Act of 2002, Pub. L. No. 107-296, § 403, 116 Stat. 2135 (2003).

Treasury Department Order 165-09, 68 FR 10777 (March 6, 2003).

Department of Homeland Security (DHS) Delegation Order 7030.2, "Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement."

ICE Delegation Order 04-006, "Authority for Designating Customs Officers within U.S. Immigration and Customs Enforcement," dated March 26, 2004.

OI Directive: "Personnel Designated to Act as Customs Officers (Excepted) for Investigative Purposes"

REL0000024869

Memorandum to all Office of Investigations (OI) Special Agents in Charge, entitled "Cross Designation Authority," dated April 8, 2004, signed by the Director of OI, ICE.

Customs Directive (CD) 1460-014A, "TECS-II Access by Non-Customs Service Employee Users," dated November 3, 2000.

CD 4510-018A, "Emergency Driving," dated June 21, 2002.

CD 4350-018, "Radio Call Signs," dated July 12, 1995.

OI Internal Delegation Order 00-19, "Authority to Approve Treasury Enforcement Communications System Access by Non-Customs Employees," dated September 13, 2000.

Interim ICE Firearms Policy, dated July 7, 2004.

Interim ICE Use of Force Policy, dated July 7, 2004.

Interim ICE Undercover Operations Handbook, dated September 2003.

3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** All legacy policies on this topic no longer apply to OI. All other issuances on this subject prior to the date of this Directive are hereby superseded.
4. **BACKGROUND.** Historically, the USCS has cross-designated State and local officers as Customs Officers under the authority of Title 19, U.S.C. 1401, due to the need for officers operating in remote locations to possess the authority of a Customs Officer. This authority allows these officers to act as Customs Officers and perform the investigative duties of a Customs Officer for investigative purposes.
5. **DEFINITION.**
 - 5.1 **Customs Officer (Excepted):** Any person designated by the Secretary of DHS to perform the investigative duties of a Customs Officer (Excepted) for investigative purposes. The designated Customs Officers will have the authority to enforce Customs laws transferred from the Department of the Treasury to DHS by the Homeland Security Act of 2002. Under this Directive, a Designated Customs Officer must be a full-time sworn domestic law enforcement officer.

6. POLICY.

- 6.1.** It is the policy of ICE that, pursuant to Title 19 U.S.C. 1401(i), sworn law enforcement personnel from other government agencies may be designated as Customs Officers (see Section 5.1) and authorized to perform the full range of law enforcement duties of a Customs Officer, as authorized by an ICE Special Agent in Charge (SAC). The designated Customs Officers will have the authority to enforce Customs laws. This Directive does not grant the designated Customs Officers the authority to enforce any laws and regulations previously enforced by the former INS.
- 6.2.** Domestic Federal, State, and local law enforcement officers may be designated as Customs Officers after receiving the standardized training outlined in Section 8.6. All designated domestic officers will be issued a “Designation, Customs Officer (Excepted)” (ICE Form 73-001) by an OI SAC. For the purposes of this Directive, the “Designation, Customs Officer (Excepted)” form will be referred to as the “Designation Form.”
- 6.2.1.** Designated Customs Officers who are assigned full-time to an ICE-sponsored task force (e.g., High Intensity Drug Trafficking Area Task Force, Organized Crime Drug Enforcement Task Force, Operation Alliance, etc.) will be issued a “Customs Officer Identification” by the SAC.
- 6.2.2.** The SAC may issue a Customs Officer Identification to an officer not assigned full-time to an ICE-sponsored task force. Examples of these officers include Marine Patrol Officers working in Customs waters or Sheriff’s Deputies patrolling remote areas along the Northern Border. State, county, or local officers conducting routine patrol/enforcement activity without a significant nexus to the international border should not receive a Customs Officer Identification.
- 6.2.3.** Designations of domestic officers will be valid for 2 years from the date of issuance of the Customs Officer Identification, the Designation Form, or any renewal thereof. Designations may be revoked by the SAC at any time if it is determined that the services of the designated Customs Officer are no longer available or needed by ICE. Further, designations will be automatically revoked if the designated Customs Officers are separated from their agency. Designations may be revoked if the designated Customs Officers are permanently transferred outside the area where their designation was initially issued. The continued designation of a transferred officer must be approved by the accepting SAC for the new duty area.
- 6.2.4.** The SACs will review and inventory, on an annual basis, all Customs Officer Identifications and Designation Forms issued by their office. The SACs will notify the Contraband Smuggling Unit, OI, ICE, and U.S. Customs and Border

Protection’s National Law Enforcement Communications Center (NLECC) of any changes.

7. RESPONSIBILITIES .

7.1. The Assistant Secretary of ICE has delegated to the Director, Office of Investigations (OI), the authority to designate persons to act as Customs Officers, without additional compensation, in ICE Delegation Order 04-006, dated March 26, 2004. This authority has been further delegated by the Director of OI to OI SACs, via a memorandum entitled “Cross Designation Authority,” dated April 8, 2004.

7.2. The Director of OI has management oversight over the designation program within ICE.

7.3. OI SACs are delegated the authority to designate persons within their respective jurisdictions as Customs Officers and may revoke designations at any time. The SACs are also responsible for ensuring that a limited background check (including, at a minimum, (b) (7)(E) [redacted]) has been conducted on all potential designated Customs Officers prior to certification.

7.4. If the SACs determine that TECS-II access should be granted to designated Customs Officers, they must follow the procedures outlined in CD 1460-014A, “TECS-II Access by Non-Customs Service Employee Users,” dated November 3, 2000. Upon approval of the request, the cross-designated Customs Officer will be granted Level I or Level III TECS-II access. TECS-II access above Level I will be at the discretion of the SAC, on a case-by-case basis, only when it is determined that it is essential and in support of the ICE mission. The local Systems Control Officer will ensure that the designated Customs Officer’s User Profile Record is restricted to only those TECS-II transactions, groups, and profile codes that have been authorized by the SAC. Designated Customs Officers will not be granted “dial-in” TECS-II access.

7.4.1. (b) (7)(E) [redacted]

7.5. By September 30th of each year, all SACs must provide written notification which lists the names of the cross-designated Customs Officers within their

OI Directive: “Personnel Designated to Act as Customs Officers (Excepted) for Investigative Purposes”

(b) (7)(E)



- 7.6. The SAC is responsible for ensuring that Designation Forms and, if appropriate, Customs Officer Identifications are issued only to current Designated Customs Officers. If a Customs Officer Identification is issued to an officer who separates from his or her agency or is permanently transferred outside the area where his or her designation was initially issued, the SAC must collect the Customs Officer Identification from the designated Customs Officer. If the transferred officer requires continued designation status and the continuation is approved by the accepting SAC, the officer may retain the Customs Officer Identification. The SAC must immediately notify the NLECC of any changes to an officer's Customs Officer Identification, radio call sign, or TECS-II access.
- 7.7. Responsibility for the designated Customs Officer's performance of duties while acting pursuant to his or her designated authority will reside with the appropriate SAC.
- 7.8. Each field office must maintain an index/inventory of all Designation Forms and Customs Officer Identifications that have been issued.
- 8. PROCEDURES**
- 8.1. When it is determined that it is necessary for domestic Federal, State, and/or local law enforcement officers to perform the duties of a designated Customs Officer, the authorizing official will execute a Memorandum of Understanding (MOU) with the participating agency. The MOU will outline the ICE duties that the designated Customs Officer will be authorized to perform.
- 8.1.2. Authorized designations must be documented in writing using a Designation Form. The use of any other form, letter, or prior edition of the Designation Form is strictly prohibited. A computer generated Designation Form will be approved for use.
- 8.1.3. The original Designation Form will be issued to the officer designated as a Customs Officer. One copy of the Designation Form will be sent to the officer's employing agency and one copy will be filed with the respective SAC.

- 8.1.4.** The SAC may limit the scope of the designated Customs Officer's designation to certain activities within a particular area of operation by so annotating the Designation Form.
- 8.1.5.** Unless otherwise limited on the Designation Form, the authority of a designated Customs Officer is valid anywhere within the United States, its territories, or Customs waters, and may be exercised as such, provided that a SAC is consulted and approval is received from that SAC. Designated personnel must act only within the scope of their designation when performing official ICE duties. The designated Customs Officers will have the same authority as that of OI Special Agents when enforcing Customs laws, as stated in sections 5.1 and 6.1 of this Directive. Designated personnel must immediately contact ICE when the designated Customs Officer's status within their agency or department changes.
- 8.2.** The Customs Officer Identification is identified by a control number and must be collected by the SAC upon completion, revocation, or expiration of the designated Customs Officer's service.
- 8.2.1.** Within OI, the Contraband Smuggling Unit, Smuggling and Public Safety Investigations Division, will maintain control over, and coordinate the issuance of all Customs Officer Identifications. The SAC will request Customs Officer Identifications from the Chief, Contraband Smuggling Unit, by submitting a memorandum. The Contraband Smuggling Unit will send non-issued Customs Officer Identifications to the requesting SAC via certified mail or express courier. The SAC will acknowledge receipt of the Customs Officer Identifications by submitting a memorandum to the Contraband Smuggling Unit, with the signature of the Assistant Secretary of ICE in the appropriate signature block.
- 8.2.2.** The Contraband Smuggling Unit is responsible for the oversight of a national database containing information on all designated Customs Officers. [REDACTED] so that the information in this database will always be available to appropriate personnel within ICE. All SACs are responsible for providing the NLECC with the required information for input into its database.
- 8.2.3.** When a Customs Officer Identification is cancelled or revoked, the field office must retrieve the Customs Officer Identification and return it to the SAC. The SAC will attach the cancelled Customs Officer Identification to the Officer's corresponding Designation Form, and appropriately annotate the Designation Form to denote cancellation of the authority. The cancelled Customs Officer Identification and the Designation Form will be kept for permanent record at the issuing SAC location. The SAC will notify the NLECC of any cancellation or revocation of cross-designation status.

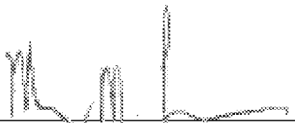
- 8.2.4.** Requests for access to (b) (7)(E) designated Customs Officers may be granted by the SAC as outlined in the USCS OI Internal Delegation Order 00-19, "Authority to Approve Treasury Enforcement Communications System (TECS)-II Access by Non-Customs Employees within the Office of Investigations (OI)," dated September 13, 2000, and CD 1460-014A, "TECS-II Access by Non-Customs Service Employee Users," dated November 3, 2000.
- 8.3.** On the Designation Form, the SAC may designate officers to perform one or more of the duties denoted in the Designation Form. Use of these authorities without first having been coordinated and approved by the appropriate SAC is strictly prohibited. Each Designation Form must specify the authorized duties of the designated Customs Officer in Box 10 marked "Duties," as well as all specific endorsements or restrictions, as described in Sections 8.3.1 to 8.3.6 below:
- 8.3.1.** Use of firearms and other specified weapons in compliance with the Interim ICE Firearms Policy, dated July 7, 2004, or as amended, and the Interim ICE Use of Force Policy, dated July 7, 2004, or as amended. (Carriage of firearms to be in compliance with the policies of the officer's employing agency.)
- 8.3.2.** Execute and serve search or arrest warrants, subpoenas, and summonses in compliance with Customs laws administered and/or enforced by ICE.
- 8.3.3.** Conduct Customs searches at the border or its functional equivalents for merchandise being imported into or exported from the United States and seize such persons or articles necessary to that end or as otherwise may be subject to seizure under the laws of the United States. Make arrests without warrant: (A) for any offense against the United States committed in his or her presence; or (B) for any felony recognizable under the laws of the United States, if he or she has probable cause to believe that the person to be arrested has committed or is committing a felony.
- 8.3.4.** Make seizures of property in compliance with Customs laws administered and/or enforced by ICE.
- 8.3.5.** Perform other law enforcement duties as may be authorized under 19 U.S.C. 1401(i), such as performing as an ICE undercover operative (only after having successfully completed the ICE Undercover Operatives School at the Federal Law Enforcement Training Center). (Refer to the ICE Interim Undercover Operations Handbook, dated September 2003, for additional information.)
- 8.3.6.** Adhere to the provisions of CD 4510-018A, "Emergency Driving," dated June 21, 2002, including determination of when to engage in emergency driving
- 8.4.** The loss or theft of any Customs Officer Identification must be immediately reported to the issuing SAC. The issuing SAC is responsible for immediately

reporting the loss to the ICE Office of Professional Responsibility (OPR), the NLECC, and the Contraband Smuggling Unit. The authorizing SAC office will initiate an NCIC entry by contacting NLECC and providing all information necessary to create a lost/stolen credential entry.

- 8.5.** The SAC will advise designated Customs Officers that misuse or abuse of the authorities conveyed by his or her designation may result in the immediate withdrawal of the authority and that appropriate administrative, criminal, or civil actions may be taken.
- 8.6.** Prior to performing the duties of a Customs Officer, all designated personnel must receive standardized training, including the following: instruction on Customs laws by the Office of the Principal Legal Advisor (OPLA) (approximately 8 hours); 1 hour on the Interim ICE Use of Force Policy, dated July 7, 2004, and the Interim ICE Firearms Policy, dated July 7, 2004, including emergency driving situations and Federal Aviation Administration and/or Transportation Security Administration regulations; 1 hour each for OI (SAC/Resident Agent in Charge) and OPR training issues; and 2 hours for a review and written test using a Standardized Test.
 - 8.6.1.** Upon successful completion of the training and after obtaining a passing score of 70 percent on the standardized test, the designated Customs Officer will receive an ICE Certificate of Completion from the authorizing SAC. All written tests and results will be maintained by the authorizing SAC for the duration of the designation.
 - 8.6.2.** After 2 years of continual designation, designated Customs Officers must complete an additional 6 hours of recertification training to include the following: 4 hours of instruction on Customs laws by OPLA, and 1 hour each for OI (SAC/RAC) and OPR training related matters.
- 8.7.** Prior to being issued a Designation Form, designated personnel must provide certification that they have received and successfully completed formal firearms qualifications from their employing agency within the previous 12 months. Designated Customs officers must qualify with their agency-issued firearm a minimum of one time during each 12-month period. Certification of this qualification must be provided to the issuing officer.
- 8.8.** All investigative SACs are responsible for ensuring that any equipment or clothing that is issued to designated Customs officers is documented appropriately, and that all records are kept on file at the issuing SAC office.
- 9. ATTACHMENTS.**
 - 9.1.** ICE Form 73-001, Designation, Customs Officer (Excepted)

- 9.2. ICE Form 73-002, Memorandum of Understanding template between ICE and other agencies
- 9.3. Customs Officer Identification sample
10. **NO PRIVATE RIGHT STATEMENT.** This Directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by any party against the United States; its departments, agencies, or other entities; its officers or employees; or any other person.

Approved



Marcy M. Forman
Director, Office of Investigations

CANCELLED/REVOKED

Authorizing Officer's Signature _____ Date _____

DEPARTMENT OF HOMELAND SECURITY
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

Credential Number: _____

DESIGNATION, CUSTOMS OFFICER (EXCEPTED)

Pursuant to the provisions of 19 U.S.C. 1401 (i), and appropriate re-delegations, and by agreement with your employing agency or service, you are hereby designated a Customs Officer (Excepted) without additional compensation. This designation, for the performance of such duties as outlined below, will be in effect while you remain in your present position and location unless revoked at an earlier date. In performing the duties of a Customs Officer (Excepted), you will be subject to all guidelines, directives and instructions of ICE. Arrangements will be made for you to receive the training necessary to perform your duties as a Customs Officer (Excepted) at your location.

This designation does not modify current ICE procedures or practices concerning the reporting, handling, and investigation of persons arrested and seizures made for violations of laws enforced by ICE. Any arrests and seizures effected while acting under this designation and any information received concerning ICE or related violations should be promptly reported to the nearest ICE office.

1. Officer's Name	2. Social Security Number	3. Date of Birth / /
-------------------	---------------------------	-------------------------

4. Agency	5. Agency Position/Rank	6. Badge Number
-----------	-------------------------	-----------------

Address _____ <small>Street</small> _____ <small>City State Zip</small> Phone () _____ - _____ Ext. _____	7. Officer's Assigned Firearm	
	Make _____	
	Model _____	
	Caliber _____	

8. ICE Office Assigned	9. Date Issued / /
------------------------	-----------------------

10. **Duties when authorized by the ICE authorizing official or his/her designee:**
(Only the duties marked are authorized for the Designated Customs Officer.)

- Use of firearms in accordance with ICE Use of Force Policy (carriage of firearms will be in accordance with the officer's employing agency);
- Execute and serve search warrants, arrest warrants, subpoenas, and summonses in accordance with laws administered and/or enforced by ICE;
- Make arrests without warrant (A) for any offense against the United States committed in his/her presence; or (B) for any felony, cognizable under the laws of the United States, if he/she has probable cause to believe that the person to be arrested has committed or is committing a felony;
- Make seizures of property in accordance with laws administered and/or enforced by ICE;
- Perform such other law enforcement duties as may be authorized under 19 U.S.C. 1401(i).
- Geographic Inhibitors (**Foreign law enforcement officers only**) Allows armed Law Enforcement Officers, while on duty and in the performance of their duties, to enter and cross foreign lands to reach a point in their home country, or in some cases a location only accessible by crossing the foreign territory;
- Exigent Circumstances (**Foreign law enforcement officers only**) Allows an armed LEO to enter the United States to provide emergency assistance, primarily to another officer, in a life threatening situation.
- Other duties: _____

Endorsements and Restrictions:

Prior to the examination or search of any aircraft, vehicle, vessel or cargo, the appropriate Special Agent in Charge or Resident Agent in Charge, will be contacted and advised of the nature of the activity.

Other Endorsements and Restrictions: _____

I have read and understand the Duties assigned, Endorsements and Restrictions.

Cross Designated Officer's Signature Date

11. Requesting Office: OI Other

12. Authorizing Officer

Printed Name Title Signature

MEMORANDUM OF UNDERSTANDING
between
the
U.S. Immigration and Customs Enforcement (ICE)
and

I. Purpose

The above listed law enforcement agency and ICE agree that effective enforcement of the laws relating to ICE jurisdiction requires close cooperation and coordination between the two agencies, and have therefore entered into this agreement to govern the use of ICE designations by certain employees of your agency.

II. Agreement

There may be instances when it may be desirable on occasion for certain sworn law enforcement employees of your agency to be able to perform certain ICE duties. Pursuant to section 401(i), Tariff Act of 1930, as amended, (19 U.S.C. 1401(i), the Secretary of Homeland Security or his/her designee is authorized to designate persons as Customs Officers (Excepted) who are designated to perform the duties of an ICE Officer. The designated Customs Officers will have the authority to enforce "Customs" laws. This agreement does not grant the designated Customs Officers the authority to enforce "Immigration" laws.

The forms and authorities referenced herein may be renamed or replaced by ICE without prejudice to this agreement.

The two agencies have, therefore, entered into an agreement as follows:

A. The U.S. Immigration and Customs Enforcement agrees:

1. *to designate certain employees of your agency as Customs Officers (Excepted), without additional compensation, to perform the duties shown on the attached "Designation, Customs Officer" form (which is hereby made part of the agreement);*
2. *to provide appropriate training in Customs laws, policies, and procedures to the designated employees;*
3. *to issue a "Designation, Customs Officer," as described in A1 above to each qualified employee;*
4. *to advise your officers regarding any court proceedings that question any seizures or arrests that are made in accordance with this agreement;*
5. *to process, under appropriate regulations, any injury claim submitted as a result of injuries occurring to local law officers acting pursuant to this agreement, for compensation under the Federal Employee Workers Compensation Act (5 U.S.C. 8101, et. seq.):*

B. The above listed law enforcement agency agrees:

1. *to advise ICE of each situation in which the agency proposes to use an ICE designation;*
2. *that ICE designations to employees of your agency will be used only in situations where there has been specific advance approval by the appropriate Special Agent in Charge or Resident Agent in Charge. Designations will be used only for the duration of the specified law enforcement activity for which the approval was extended, and to the extent of such approval.*
3. *that only personnel who are sworn law enforcement officers of your agency and who successfully complete the appropriate ICE cross-designation training and received a "Designation, Customs Officer" form will be granted Customs Officer status;*
4. *to report to ICE, in writing, the results of all activity undertaken by the designated Customs Officer as a consequence of the Customs cross designation authority;*
5. *to advise ICE of each court proceeding in which the validity of ICE search, seizures, or arrest authority has become an issue; and to permit ICE to provide legal memoranda or other assistance in such cases when desired by ICE.*
6. *to follow ICE directives and instructions that are applicable to ICE concerning ICE search, seizure, and arrest authority;*
7. *to return all ICE equipment and identification if issued, when a cross designated officer terminates employment for any reason.*

Both agencies agree to:

1. *recognize that any abuse of ICE cross designation authority may lead to the revocation of such cross designations by ICE;*
2. *agree to exchange implementing instructions prior to issuance; and*
3. *agree to schedule periodic meetings to review this agreement.*

(b) (7) (E)

(b) (7) (E)