

**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

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

1. **PURPOSE and SCOPE.** To provide comprehensive guidelines regarding the designation of foreign 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 domestic 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: "Foreign Personnel Designated to Act as Customs Officers (Excepted) for Investigative Purposes"

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Memorandum to all ICE 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 SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES. None.

4. BACKGROUND. Historically, the U.S. Customs Service 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 U.S. Customs Officer. This authority allows these officers to act as Customs Officers and perform the investigative duties of a Customs Officer for investigative purposes. This Directive extends this authority to permit the cross-designation of foreign law enforcement officers.

5. DEFINITIONS.

5.1. Customs Officer (Excepted): Any person designated by the Secretary of Homeland Security to perform the 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.

5.1.1. Under this Directive, a designated Customs Officer must be a full-time sworn foreign law enforcement officer. A full-time sworn foreign law enforcement officer is an armed officer who may bring into, and possess, his or her agency-issued firearm and ammunition in the United States. Foreign law enforcement officers who are not armed will not be considered law enforcement officers for the purposes of this Directive.

- 5.2. Geographic Pass Through:** Geographic pass-through authority allows armed law enforcement officers, while on duty and in performance of their duties, to enter and pass through the United States to reach a point in their home country. In some cases, those locations may be accessible only by crossing the United States.
- 5.3. Emergency Circumstances:** Emergency circumstances authority allows on-duty law enforcement officers armed with their agency-issued weapon to enter the United States to provide emergency assistance, primarily to another law enforcement officer, in a life-threatening situation.

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 foreign 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 designated Customs Officer as authorized by approving officials. 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.** Foreign law enforcement officers may be designated as Customs Officers after receiving the standardized training outlined in Section 8.6. All designated foreign law enforcement officers will be issued a "Designation, Customs Officer (Excepted)" (ICE Form 73-001) by an ICE OI Special Agent in Charge (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., Integrated Border Enforcement Team or other ICE Task Force) and who are under the day-to-day control of an ICE Supervisory Special Agent will be issued a Customs Officer Identification by the SAC for the respective area.
- 6.2.2.** A SAC may issue a Customs Officer Identification to an officer not assigned full-time to an ICE-sponsored task force. An example of this would be foreign officers who are working in remote areas along the Northern Border who may require geographic pass-through rights (see Section 5.2). Foreign 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 foreign law enforcement officers will be valid for up to 2 years from the date of issuance of the Customs Officer Identification, the Designation Form, or any renewal thereof. The issuing SAC may revoke designations at any time if it is determined that the services of the designated officer are no longer available or needed by ICE. Further, designations will be automatically revoked if the designated officers are separated from their agency. Designations may be

revoked if the designated 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 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 of 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, Treasury Enforcement Communications System [TECS]-II, National Crime Information Center [NCIC], and National Law Enforcement Telecommunications System) has been conducted on all potential designated Customs Officers prior to certification. Additionally, the foreign officer's respective agency will ensure that proper background checks are performed in foreign databases and that the foreign officer has no past or present legal issues that would preclude certification by ICE.
- 7.4. If the SAC determines that (b) (7)(E) access should be granted to a designated Customs Officer, a Background Investigation must first be completed. In addition, the SAC must follow the procedures outlined in CD 1460-014A, (b) (7)(E) Access by Non-Customs Service Employee Users," dated November 3, 2000. Upon approval of the request, the cross-designated Customs Officer will be granted (b) (7)(E) 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 mission of ICE. The local Systems Control Officer will ensure that the designated foreign law enforcement officer's User Profile Record is restricted to only those (b) (7)(E) transactions, groups, and profile codes that have been authorized by the SAC. Designated foreign law enforcement officers will not be granted "dial-in" (b) (7)(E) access under this Directive.

7.4.1.



- 7.5. By September 30th of each year, all SACs must provide written notification which lists the names of the cross-designated foreign law enforcement officers within their jurisdiction, to both the Contraband Smuggling Unit, Smuggling and Public Safety Investigations Division, Office of Investigations, and NLECC. For each cross-designated foreign law enforcement officer, the list should also indicate the Customs Officer Identification issuance date and number, the level of TECS-II access the officer has been granted, and the officer's radio call sign. If the written certification is not received by NLECC within 30 days after it is due, the designated Customs Officer will automatically be removed from the call sign database. The officers will not be permitted access to NLECC services.
- 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 officer. If the transferred officer requires continued designation status and if 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 foreign law enforcement officers to perform the duties of a Customs Officer, the respective SAC 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. The respective SAC will simultaneously inform the ICE Attaché in

the appropriate foreign country within 5 days of the cross-designation of the foreign law enforcement officer.

- 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 foreign employing agency and one copy will be filed with the respective SAC. Upon cancellation or termination of the Officer's authority, the identification card will be attached to the corresponding Officer's Designation Form, and both annotated as cancelled.
- 8.1.4. The SAC may limit the scope of the designated Customs Officer's authority to certain activities or to 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 authority to enforce Customs laws only, as stated in sections 5.1 and 6.1 of this Directive. Designated personnel must immediately contact ICE when the designated 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 respective SAC upon completion, revocation, or expiration of the designated 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 respective 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 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 displayed 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. A centralized radio call sign database will be utilized by the NLECC so that the

information in this database will always be available to appropriate personnel in ICE. Each participating SAC is responsible for providing the NLECC with the required information regarding all designated Customs officers, for input into the NLECC database.

- 8.2.3.** When a Customs Officer Identification is cancelled or revoked, the field office must retrieve the ID card 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 identification card and 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) by designated Customs Officers may be granted by the SAC as outlined in the U.S. Customs Service OI Internal Delegation Order 00-19, "Authority to Approve Treasury Enforcement Communications System (b) (7)(E) Access by Non-Customs Employees within the Office of Investigations (OI)," dated September 13, 2000, and CD 1460-014A, (b) (7)(E) Access by Non-Customs Service Employee Users," dated November 3, 2000. Those cross-designated foreign officers requiring access to (b) (7)(E) shall undergo a full background investigation.
- 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 an appropriate OI 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 8.3.8 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, as per ICE direction and guidelines.
- 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 "Undercover Operations Handbook," dated September 2003, for additional information).
- 8.3.6.** Cross-designated Customs Officers may enter and pass through the United States in a manner as required by law, armed with their agency-issued weapon, while on duty and in performance of duties, and/or to reach a point in their home country. In some cases, those locations may be accessible only by crossing through the United States (see Section 5.2).
- 8.3.7.** Cross-designated Customs Officers may enter the United States in a manner as required by law, while on duty and armed with their agency-issued weapon, to provide assistance during emergency circumstances, primarily to another law enforcement officer, in a life-threatening situation (see Section 5.3).
- 8.3.8.** 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 immediately be reported to the issuing SAC. The SAC is responsible for immediately reporting the loss to the ICE Office of Professional Responsibility (OPR), the NLECC, and the Headquarters Contraband Smuggling Unit within OI. 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, or as amended, and the Interim ICE Firearms Policy, dated July 7, 2004, or as amended, including emergency driving situations, and Transportation Security Administration (TSA) regulations; 1 hour each for ICE and OPR related matters; and 2 hours for a review and written test using a "Standardized Test."
- 8.6.1.** Prior to any cross-designated foreign law enforcement officers flying armed aboard commercial aircraft, they must have completed the training program "Law

Enforcement Officers Flying Armed,” as required by 49 C.F.R. 1544.219(a)(1)(iv). Additionally, prior to any flight by an armed cross-designated foreign law enforcement officer, the SAC responsible for the designation will coordinate with the local TSA office to ensure that the TSA is notified of the cross-designated officer’s flight. It is the responsibility of the foreign designated officer to ensure that all policies and procedures are followed regarding proper notification to airline personnel, airport screeners, flight crews, and any other persons requiring official notification that the designated officer is traveling armed.


- 8.6.2. Upon successful completion of the training and after obtaining a passing score of 70 percent on the standardized test, the designated officer will receive an ICE Certificate of Completion from the respective SAC. The authorizing SAC office will maintain all written tests 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 ICE and OPR.
- 8.6.3. Requirements for training may be altered by the SAC for individuals requiring lesser authorities, for example foreign law enforcement officers requiring geographic inhibitors and/or in emergency circumstances only. Foreign law enforcement officers requiring these lesser authorities should be familiar and 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. The respective SAC should inform these officers of potential liability issues regarding these special circumstances.
- 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 past 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 SAC.

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