

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
HOMELAND SECURITY INVESTIGATIONS**

**HSI Directive 19-01: Use of Small Unmanned Aircraft Systems**

**Issue Date:** April 3, 2019

**Effective Date:** April 3, 2019

**Superseded:** None.

**Federal Enterprise Architecture Number:** 306-112-002b

- 1. Purpose/Background.** This Directive establishes U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) policy and procedures governing the use and operation of small Unmanned Aircraft Systems (sUAS) by HSI personnel. sUAS are invaluable law enforcement tools that offer efficient ways to protect and serve the public while promoting officer safety. As with any law enforcement capability, HSI must use sUAS in a manner that is consistent with the requirements and protections of the Constitution, including the Fourth Amendment and cited statutory authorities as outlined in Section 7 of this Directive. Moreover, information collected from the operation of sUAS must be handled in a way that is consistent with the array of cited statutes, regulations, and policies as outlined in Section 7 of this Directive that guide law enforcement in how it may and may not collect, retain, and disclose the information. As technology evolves, HSI must continue to assess its tools to ensure that practice and applicable policies reflect HSI's law enforcement and national security missions, as well as HSI's commitments to accord respect for individuals' privacy and civil liberties. HSI will continue to reexamine this Directive and the policies and procedures relating to the collection, use, retention, and dissemination of information by sUAS in accordance with the Presidential Memorandum on Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems, dated February 15, 2015, referenced in Section 7.4 of this Directive, to ensure that privacy, civil rights, and civil liberties are protected.
- 2. Policy.** It is the policy of HSI that sUAS shall be operated in a safe, legal, and efficient manner in the furtherance of HSI's mission requirements to ensure aviation safety, preserve individual privacy, guard civil rights, and protect civil liberties. HSI may utilize sUAS in a variety of its missions, including, but not limited to, search and rescue, disaster response, public safety assurance at special events, active shooter and barricaded person response, the serving of high-risk warrants, force protection during undercover meetings with criminal suspects, and pre-operation evaluation purposes, subject to this Directive. The authority to engage in these activities is outlined in Section 7 of this Directive. Operation of sUAS and the collection of video recordings shall be solely for official purposes in compliance with this Directive and shall not be used in a manner that would violate the First Amendment or in any manner used to target a person based on his or her race, color, religion, sex, sexual orientation, gender identity, or national origin.

3. **Definitions.** The following definitions apply for purposes of this Directive only:
- 3.1. **Certificate of Authorization (COA).** Permission to fly within specific boundaries and perimeters identified by the Federal Aviation Administration (FAA). (See FAA Form 7711-2, Certificate of Waiver or Authorization, dated October 5, 2017, or as updated.)
  - 3.2. **Federal Aviation Administration (FAA).** The component of the U.S. Department of Transportation responsible for overseeing access to the national airspace.
  - 3.3. **FAA Part 107 License.** As detailed in Title 14, Code of Federal Regulations (C.F.R.), Part 107, the official certification allowing for the operation of sUAS.
  - 3.4. **FAA-Recognized Equivalent.** An FAA recognition that a public agency may exercise its own internal processes regarding airworthiness and pilot, aircrew, and maintenance personnel certification and training; furthermore, the agency has determined that its sUAS can capably operate safely in the National Airspace System (NAS).
  - 3.5. **Public Aircraft.** An aircraft operated by a governmental entity (including federal, state, or local governments, the U.S. Department of Defense, and its military branches) for government missions.
  - 3.6. **Small Unmanned Aircraft Systems (sUAS).** Government-owned, commercially available aircraft weighing less than 55 pounds, and associated elements, with either fixed or rotary wings, flown and controlled by Remote Pilots on the ground, including tethered aircraft.
  - 3.7. **Remote Pilot.** An HSI law enforcement officer who is: 1) issued a current FAA Part 107 license; 2) qualified by a Senior Pilot as ready for safe flight; 3) in compliance with the requirements of this Directive and FAA Part 107; and 4) designated by the Chief Pilot as an authorized operator of agency sUAS, as listed in the list of HSI designated Pilots.
  - 3.8. **Senior Pilot.** A Pilot designated by the Chief Pilot who possesses sufficient pilot experience and good judgment to fulfill the responsibilities assigned in this Directive.
  - 3.9. **Chief Pilot.** A Senior Pilot who is designated by the Unit Chief, Technical Operations Unit, who possesses sufficient pilot experience and good judgment to fulfill the responsibilities assigned in this Directive and other duties that may be delegated by the Unit Chief, Technical Operations Unit, to ensure the safe deployment and use of sUAS.
  - 3.10. **Remote Pilot in Command (RPIC).** As regulated by the FAA, the Remote Pilot who has final authority and responsibility for the operation and safety of the flight, has been designated or self-designated as the RPIC before or during the flight, and holds the appropriate category, class, and type of rating, if applicable, for the conduct of the flight. The RPIC's authority includes the decision not to fly or to terminate a mission.

#### **4. Responsibilities.**

- 4.1.** The **Executive Associate Director of HSI** is responsible for the oversight of the provisions of this Directive.
- 4.2.** The **Assistant Director, Operational Technology and Cyber Division**, is responsible for ensuring the overall implementation of the provisions of this Directive within HSI.
- 4.3.** The **Unit Chief, Technical Operations Unit**, is responsible for:
- 1) Implementing the provisions of this Directive within HSI;
  - 2) Designating the Chief Pilot;
  - 3) Designating authorized aircraft, Remote Pilots, and Senior Pilots;
  - 4) Designating the basic and advanced training requirements for HSI Remote Pilots meeting those in this Directive and ensuring that training is uniform for all HSI Remote Pilots;
  - 5) Promulgating any maintenance and flight operation requirements; and
  - 6) Coordinating fleet management, acquisition, and disposal of HSI-owned sUAS. The Unit Chief may delegate this authority to the Chief Pilot to execute relevant responsibilities.
- 4.4.** **HSI Special Agents in Charge (SACs)** are responsible for implementing the provisions of this Directive within their area of responsibility (AOR) and approving the use of aircraft owned by another agency by Remote Pilots within their AOR for HSI-led operations in instances where HSI-owned aircraft are unavailable. This Directive applies to the same extent to HSI use of non-agency aircraft as it does to aircraft owned and used by HSI. The use of non-agency aircraft shall be approved by the SAC only in cases of necessity. Additionally, to the extent that non-agency aircraft possess technology not contemplated by this Directive, HSI pilots are prohibited from using that technology.
- 4.5.** **HSI Technical Enforcement Officers and Special Agents** are responsible for complying with the provisions of this Directive.
- 4.6.** The **Chief Pilot** is responsible for:
- 1) Coordinating and documenting acquisitions, maintenance, and training requirements for all sUAS;
  - 2) Designating Remote Pilots and Senior Pilots;

- 3) Subscribing to all relevant FAA updates affecting HSI Remote Pilots regarding FAA regulations and requirements, including national FAA Notices to Airmen, and disseminating the information immediately if the nature of the update is urgent or otherwise within 1 business day, by sending email communication to all affected HSI Remote Pilots;
- 4) Designating a Senior Pilot as the acting Chief Pilot in the Chief Pilot's absence and communicating the designation to all Remote Pilots and the Unit Chief by email communication.
- 5) Maintaining the records of currently designated Remote Pilots, Senior Pilots, and the aircraft types they are authorized to operate; and
- 6) Fulfilling any additional duties delegated by the Unit Chief, Technical Operations Unit, as assigned.

**4.7. Senior Pilots** are responsible for:

- 1) Qualifying a potential Remote Pilot's readiness to fly in a safe manner that is in compliance with this Directive;
- 2) Verifying the proficiency of Remote Pilots and other Senior Pilots to safely operate a particular aircraft type, including a check flight for any aircraft owned by another agency if that aircraft is approved for use by the SAC;
- 3) Providing advanced training to Remote Pilots for new aircraft;
- 4) Reporting qualified Remote Pilots and the aircraft they are authorized to operate to the Chief Pilot; and
- 5) Validating aircraft airworthiness.

**4.8. Remote Pilots**, including the Chief Pilot and all Senior Pilots, are responsible for conducting sUAS missions in compliance with this Directive, and fulfilling all the duties of the RPIC during operations when designated as the RPIC, and keeping abreast of FAA Notices to Airmen using the FAA mobile application.

**4.9. The Remote Pilot in Command (RPIC)** has final authority and responsibility for the operation and safety of the flight, including the decision not to fly or to terminate a mission. The RPIC position may rotate as necessary with equally qualified Remote Pilots and may change during flight, with due care for safety.

## 5. Procedures.

- 5.1. Authorized Personnel.** HSI employees are not authorized to manipulate the controls of HSI sUAS except when: 1) they have been previously authorized by the Chief Pilot as HSI Remote Pilots and are presently on the Technical Operations Unit's list of designated Remote Pilots; 2) they have successfully passed the FAA Part 107 exam and are presently receiving a flight evaluation from a Senior Pilot; or 3) they are attending an HSI-approved sUAS training course.
- 5.2. Official Purpose.** Operation of sUAS and the collection of video recordings shall be solely for official purposes in compliance with this Directive and shall not be used in a manner that would violate the First Amendment or in any manner used to target a person based on his or her race, color, religion, sex, sexual orientation, gender identity, or national origin. In instances where flights are not under the authority of a warrant or court order, Remote Pilots shall notify the local Office of the Principal Legal Advisor (OPLA) embedded attorney and are strongly encouraged to seek guidance in unusual situations.
- 5.3. Compliance with FAA Regulations.** Aircraft and Remote Pilots must at all times maintain compliance with 14 C.F.R., Part 107 to operate in the NAS and the COA that governs the Department. The FAA retains the sole authority to approve government sUAS operations within the NAS.
- 5.4. Flight Logs and Inspections.** RPICs shall perform a pre-flight inspection in accordance with manufacturer recommendations before each flight to ensure the airworthiness of the sUAS and shall discontinue any mission in which airworthiness or safety is compromised. RPICs shall also perform a post-flight inspection of the aircraft to determine airworthiness and any damage. The RPIC shall record each flight in both the log of the individual sUAS and the Remote Pilot's logbook.
- 5.5. Video Collection and Minimization.** During a flight, the RPIC may record video and images from a camera mounted to the sUAS. Incidental collection of video recordings shall be minimized through the mandatory deletion of all collected video and photos within 30 days, unless the video recording or photos meet one of the following criteria: 1) they contain evidence of a crime; 2) they were collected during an operation that focused on a particular subject of investigation (business or persons), even if no crime is recorded, in order to preserve it as potential exculpatory evidence, also known as *Brady* material; 3) they were ordered by a court; or 4) they were recorded during a training flight and all images or video recordings containing people or other information protected by the Privacy Act of 1974 are of those who participated in the training. (See Sections 7.1, 7.2, and 7.3.)
- 5.6. Video Deletion and Evidence Handling.** At the conclusion of a flight where images or video recordings were collected, the RPIC shall either delete the recordings or transfer the recordings to a secure storage location as soon as it is practical, but no later than 3

business days. Until deposited in a secure storage location, the recordings shall be kept in a locked and secure temporary location to maintain chain of custody.

Until deletion, the RPIC who obtained the video or photographic recordings shall retain any collected video recordings or photos in their local secure facility where temporary electronic recordings are stored. Until it has been determined that a recording will be retained as government generated evidence, it should be kept separate from items determined to be evidence. To ensure documentation of the chain of custody, the temporary recordings shall be placed in an evidence bag and documented on a Department of Homeland Security (DHS) Form 6051D, Detention Notice and Custody Receipt for Detained Property, with a date of deletion marked that is 30 calendar days after the date of the recording. The RPIC shall make a calendar reminder for the deletion date and shall erase the memory of the digital media on that date. Prior to the deletion date, if the video recording is retained in accordance with Section 5.5 of this Directive, it shall not be deleted and shall be handled as evidence.

All criminal evidence and exculpatory evidence shall be processed and stored as “government generated evidence” in accordance with the policy in the Technical Operations Handbook (HSI HB 14-04), dated July 21, 2014, or as updated, and the Evidence Handbook (HSI HB 15-05), dated November 9, 2015, or as updated. All video recordings retained by order of a court shall be processed and stored as government generated evidence in accordance with the HSI Handbooks mentioned above.

- 5.7. Audio Recording.** Recordings collected from sUAS shall not include audio recordings. If audio recording capability exists on an aircraft, the RPIC shall ensure that it is disabled prior to flight.
- 5.8. Visual Contact and Visual Observer.** RPICs must maintain visual contact with aircraft during flight, in compliance with FAA Part 107 regulations, or the RPIC must designate and utilize a visual observer. When necessary, an employee of another agency is authorized to be designated by the RPIC as a visual observer. The RPIC shall maintain continuous audio contact whenever utilizing a visual observer and shall remain solely responsible for the safe and lawful operation of the aircraft.
- 5.9. Check Flights.** A Remote Pilot must conduct a check flight to the satisfaction of a Senior Pilot prior to operating a new sUAS type. The Senior Pilot will inform the Chief Pilot of a successful check flight for recording the Remote Pilot’s eligible aircraft type on the record of HSI designated Remote Pilots. A Remote Pilot may then operate any authorized aircraft of that type.
- 5.10. Proficiency.** For each mission where an sUAS is deployed, the RPIC must first be proficient in that aircraft type by conducting and logging a minimum of three takeoffs and recoveries of that type of aircraft within the previous 90 days. If not proficient, the RPIC must establish proficiency prior to flying the mission.

- 5.11. Other Agencies.** HSI often works closely with its federal, state, and local law enforcement partners and provides technical assistance under a variety of circumstances. In all cases, law enforcement authorities in the United States must conduct their missions lawfully and in a manner that respects the rights of the citizens they serve. This Directive applies to all instances in which HSI uses sUAS in support of other federal agencies and/or state and local law enforcement agencies. HSI aircraft shall not be used pursuant to the authority of another agency and may only be used where HSI has its own authority to fly the aircraft. HSI personnel shall not assist with the operation of any sUAS equipment by another law enforcement agency where this policy would prohibit the use of sUAS for the mission. Any original evidence recordings collected when assisting another agency will be processed in accordance with Sections 5.5, 5.6, and 6.7, as well as any applicable authorities and references listed in Section 7 of this Directive.
- 5.12. Authorized Equipment and Use.** HSI-owned sUAS shall be operated only by designated HSI Remote Pilots. Remote Pilots shall not operate any sUAS in an official capacity unless the aircraft is: 1) owned by HSI; 2) supplied by an HSI contractor on loan to replace an aircraft under repair, or for demonstration; or 3) owned by a partner law enforcement agency, where a) the partner agency sUAS is approved for use by the SAC in whose AOR the operating Remote Pilot is flying, and b) a Senior Pilot has conducted a check flight with the Remote Pilot for that aircraft type. In all instances involving non-HSI-owned aircraft, the Remote Pilot must have 1) conducted a check flight with a Senior Pilot and 2) established proficiency for the type of aircraft, in compliance with Sections 5.9 and 5.10 of this Directive.

Any non-HSI-owned aircraft approved by the SAC must be in compliance with this Directive, and any memorandum of understanding (MOU) between HSI and the partner law enforcement agency shall include an agreement that this Directive governs the use of the aircraft. To the extent that any MOU is silent on the issue, this Directive governs the use of non-HSI-owned aircraft, as well as the prohibition on the use of HSI-owned aircraft by non-HSI personnel.

- 5.13. Misuse.** HSI personnel shall comply with the provisions of this Directive, know the limits of HSI authority, use this authority judiciously, and ensure comprehension and completion of any training programs. Remote Pilots shall remain aware of the use of sUAS when a flight is near a sensitive site such as an elementary school or a religious facility. Remote Pilots shall avoid sensitive sites when possible and shall minimize the use of sUAS at sensitive sites to only the required subject matter and for the shortest duration necessary to fulfill the required mission. HSI Remote Pilots shall notify their local OPLA embedded attorney and seek guidance whenever a sensitive site is anticipated to be involved in a flight. Any misuse of sUAS, or any violation of this Directive, may result in discipline up to, and including, removal from federal service. HSI personnel shall contact the DHS Joint Intake Center for instances of suspected misuse or abuse of sUAS.

- 5.14 Training.** Personnel are required to attend training before being approved as HSI Remote Pilots, and at intervals designated to retain active status, which shall include training on both privacy and civil liberties. The Unit Chief, HSI Technical Operations Unit, is responsible for the development and coordination of the initial and advanced training requirements for the use of sUAS and shall consult with OPLA and other Directorates or Program Offices for assistance in developing the curriculum and/or presenting the material as needed.
- 5.15 Storage.** All sUAS equipment will be stored in a secure location as sensitive equipment, in accordance with the Technical Operations Handbook (HSI HB 14-04), dated July 21, 2014, or as updated.
- 6. Recordkeeping.**
- 6.1.** All records created under this Directive, with the exception of recordings or images made during flight, shall be maintained in accordance with the records schedules in Section 7.16, or as amended.
- 6.2.** Paper logs for all sUAS required by FAA regulations shall be maintained by Remote Pilots, to include a notation of any damage, repairs, parts installation or replacement, maintenance and preventive maintenance conducted, flight hours, and other notes that indicate airworthiness. In accordance with FAA standards, aircraft records shall remain with a particular aircraft at the home office where it is stored. If an aircraft is transferred, the logs shall travel with the aircraft.
- 6.3.** Paper records of authorized aircraft types, designated Remote Pilots and Senior Pilots, and inventory of HSI-owned aircraft shall be maintained by the Chief Pilot. The storage location for these records is the HSI Technical Operations Unit in Lorton, VA.
- 6.5.** Remote Pilot paper logbooks shall be maintained up to date with all data about each flight, including the date, time, duration, aircraft flown, and relevant comments about the flight. Remote Pilots shall retain possession of their logbooks in accordance with FAA standards, and shall provide the logbook for inspection by the Chief Pilot, the Unit Chief, or the FAA upon request.
- 6.6.** Original recordings for evidence (i.e., “government generated evidence”) and recordings held for up to 30 days under Section 5.6 will be maintained in accordance with the records and retention policies described in Section 9.11(A) of the Evidence Handbook (HSI HB 15-05), dated November 9, 2015, or as updated, as referenced in Section 7.10 of this Directive.
- 6.7.** No recordings or images may be shared outside of HSI, except for recordings and images retained as evidence in accordance with Section 5.5 of this Directive. Recordings and images will be shared only for official purposes, such as discovery in a criminal



proceeding, with the investigating agency in accordance with the authorities in Sections 7.10 and 7.11 of this Directive, or as updated.

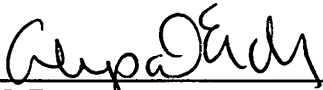
**7. Authorities/References.**

- 7.1.** Public Law 107-296, Homeland Security Act of 2002.
- 7.2.** Public Law 112-95, Title III, Subtitle B – Unmanned Aircraft Systems (FAA Modernization and Reform Act of 2012).
- 7.3.** Public Law 114-90, Title II, Subtitle B – UAS Safety (FAA Extension, Safety, and Security Act of 2016).
- 7.4.** Federal Register Vol. 80, No. 34, Presidential Memorandum on Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems, dated February 15, 2015.
- 7.5.** 14 C.F.R. Part 107, Small Unmanned Aircraft Systems.
- 7.6.** FAA Form 7711-1, Certificate of Waiver or Authorization, dated October 5, 2017, or as updated.
- 7.7.** Current FAA policy provided in 14 C.F.R. Parts 91 and 107 and/or FAA Order 8900.1, Volume 16, Unmanned Aircraft Systems (UAS).
- 7.8.** Department of Homeland Security Best Practices for Protecting Privacy, Civil Rights, and Civil Liberties in Unmanned Aircraft Systems Programs, dated December 18, 2015.
- 7.9.** ICE Directive 1022.1 (former number: 1-15.0), Table of Offenses and Penalties (TOP), and its attached “Guidelines and Instructions on Use of the Table of Offenses and Penalties,” dated December 8, 2006, or as updated.
- 7.10.** HSI HB 15-05, Evidence Handbook, dated November 9, 2015, or as updated.
- 7.11.** HSI HB 14-04, Technical Operations Handbook, dated July 21, 2014, or as updated.
- 7.12.** Office of Investigations (OI) HB 08-02, Case Management Handbook, dated February 1, 2008, or as updated.
- 7.13.** Title 8, United States Code (U.S.C.), Section 1357, Powers of immigration officers and employees.
- 7.14.** 19 U.S.C. § 1589a, Enforcement authority of customs officers.
- 7.15.** Privacy Act of 1974, 5 U.S.C. § 552a.

7.16. National Archives and Records Administration, General Records Schedule 5.4, Items 100, 110, 120, and 130.

8. **Attachments.** None.

9. **No Private Right.** This document provides only internal HSI policy guidance, which may be modified, rescinded, or superseded at any time without notice. It is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter. Likewise, no limitations are placed by this guidance on the otherwise lawful enforcement or litigative prerogatives of ICE.



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