

a reasonable opportunity to correct such noncompliance.

(b) *Notice and appeal.* The Assistant Commissioner, Office of Field Operations, shall suspend or remove participants from the ACSPP by serving notice of the proposed action upon the carrier in writing. The notice shall be in the form of a statement specifically setting forth the grounds for suspension or removal and shall provide the carrier with notice that it may file a written notice of appeal from suspension or revocation within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate to the office of the Assistant Commissioner, Field Operations, and shall set forth response of the carrier to the statement of the Assistant Commissioner.

(c) *Notice of decision.* The Assistant Commissioner, Office of Field Operations, shall notify the participating carrier in writing of the decision concerning continued participation in the program.

(d) *Use of uniform criteria.* When making any determination regarding a carrier's participation or continuation in the ACSPP, the Assistant Commissioner, Office of Field Operations, shall employ a uniform standard of performance and evaluation.

[T.D. 91-25, 56 FR 12347, Mar. 25, 1991, as amended by T.D. 91-77, 56 FR 46115, Sept. 10, 1991; T.D. 99-27, 64 FR 13675, Mar. 22, 1999]

### Subpart S—Access to Customs Security Areas

SOURCE: T.D. 90-82, 55 FR 42557, Oct. 22, 1990, unless otherwise noted.

#### § 122.181 Definition of Customs security area.

For purposes of this section, the term "Customs security area" means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to, foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. These areas will be posted as restricted to the extent possible and are established for the pur-

pose of prohibiting unauthorized entries or contact with persons or objects.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48984, July 29, 2002]

#### § 122.182 Security provisions.

(a) *Customs access seal required.* With the exception of all Federal and uniformed State and local law enforcement personnel and aircraft passengers and crew, all persons located at, operating out of, or employed by any airport accommodating international air commerce or its tenants or contractors, including air carriers, who have unescorted access to the Customs security area, must openly display or produce upon demand an approved access seal issued by Customs. The approved Customs access seal must be in the possession of the person in whose name it is issued whenever the person is in the Customs security area and must be used only in furtherance of that person's employment in accordance with the description of duties submitted by the employer under paragraph (c)(1) of this section. The Customs access seal remains the property of Customs, and any bearer must immediately surrender it as provided in paragraph (g) of this section or upon demand by any authorized Customs officer for any cause referred to in § 122.187(a). Unless surrendered pursuant to paragraph (g) of this section or § 122.187, each approved Customs access seal issued under paragraph (c)(1) of this section will remain valid for 2 years from January 1, 2002, in the case of a Customs access seal issued prior to that date and for 2 years from the date of issuance in all other cases. Retention of an approved Customs access seal beyond the applicable 2-year period will be subject to the reapplication provisions of paragraph (c)(2) of this section.

(b) *Employers responsibility.* Employers operating in Customs airport security areas shall advise all employees of the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the port director of any

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changes of employment pursuant to § 122.182(g).

(c) *Application requirements*—(1) *Initial application*. An application for an approved Customs access seal, as required by this section, must be filed by the applicant with the port director on Customs Form 3078 and must be supported by a written request and justification for issuance prepared by the applicant's employer that describes the duties that the applicant will perform while in the Customs security area. The application requirement applies to all employees required to display an approved Customs access seal by this section, regardless of the length of their employment. The application must be supported by the bond of the applicant's employer or principal on Customs Form 301 containing the bond conditions set forth in § 113.62, § 113.63, or § 113.64 of this chapter, relating to importers or brokers, custodians of bonded merchandise, or international carriers. If the applicant's employer is not the principal on a Customs bond on Customs Form 301 for one or more of the activities to which the bond conditions set forth in § 113.62, § 113.63, or § 113.64 relate, the application must be supported by an Airport Customs Security Area Bond, as set forth in appendix A of part 113 of this chapter. The latter bond may be waived, however, for State or local government-related agencies in the discretion of the port director. Waiver of this bond does not relieve the agency in question or its employees from compliance with all other provisions of this subpart. In addition, in connection with an application for an approved Customs access seal under this section:

(i) The port director may require the applicant to submit fingerprints on form FD-258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the Customs administrative processing fee, the total of which must be tendered by, or on behalf of, the applicant with the application; and

(ii) Proof of citizenship or authorized residency and a photograph may also be required.

(2) *Reapplication*. If a person wishes to retain an approved Customs access seal for one or more additional 2-year periods beyond the 2-year period referred to in paragraph (a) of this section, that person must submit a new application no later than 30 calendar days prior to the start of each additional period. The new application must be filed in the manner specified in paragraph (c)(1) of this section for an initial application, and the port director may also require the submission of fingerprints as provided in paragraph (c)(1)(i) of this section. The new application will be subject to review on a de novo basis as if it were an initial application except that the written attestation referred to in paragraph (d) of this section will not be required if there has been no change in the employment of the applicant since the last attestation was submitted to Customs.

(d) *Background check*. An authorized official of the employer must attest in writing that a background check has been conducted on the applicant, to the extent allowable by law. The background check must include, at a minimum, references and employment history, to the extent necessary to verify representations made by the applicant relating to employment in the preceding 5 years. The authorized official of the employer must attest that, to the best of his knowledge, the applicant meets the conditions necessary to perform functions associated with employment in the Customs security area. Additionally, the application may be investigated by Customs and a report prepared concerning the character of the applicant. Records of background investigations conducted by employers must be retained for a period of one year following cessation of employment and made available upon request of the port director.

(e) *Law Enforcement officers and other governmental officials*. Law enforcement officers and other Federal, State, or local officials whose official duties require access to the Customs security area may request from the port director the issuance of an approved Customs access seal. They need not make

application nor submit to background checks for security area access. An Airport Customs Security Area Bond is not required.

(f) *Replacement access seal.* A new Customs access seal may be obtained from the port director in the following circumstances, without the completion of an additional application, except as determined by the port director in his discretion:

(1) A change in employee name or address;

(2) A change in the name or ownership of the employing company;

(3) A change in employer or airport authority identification card format; or

(4) Loss or theft of the Customs access seal (see §122.185 of this part).

(g) *Surrender of access seal.* Where the employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance due to a change in duties, termination of employment, or other reason, or where the 2-year period referred to in paragraph (a) of this section expires and a new application under paragraph (c)(2) of this section has not been approved, the employer shall notify the port director in writing, at the time of such change, and shall return the Customs access seal to Customs. The notification shall include information regarding the disposition of the approved Customs access seal of the employee.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 93-18, 58 FR 15773, Mar. 24, 1993; T.D. 02-40, 67 FR 48984, July 29, 2002; 67 FR 51928, Aug. 9, 2002]

**§ 122.183 Denial of access.**

(a) *Grounds for denial.* Access to the Customs security area will not be granted, and therefore an approved Customs access seal will not be issued, to any person whose access to the Customs security area will, in the judgment of the port director, endanger the revenue or the security of the area or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety. Specific grounds for denial of access to the Customs security area include, but are not limited to, the following:

(1) Any cause which would justify a demand for surrender of a Customs ac-

cess seal or the revocation or suspension of access under §122.182(g) or §122.187;

(2) Evidence of a pending or past investigation establishing probable cause to believe that the applicant has engaged in any conduct which relates to, or which could lead to a conviction for, a disqualifying offense listed under paragraph (a)(4) of this section;

(3) The arrest of the applicant for, or the charging of the applicant with, a disqualifying offense listed under paragraph (a)(4) of this section on which prosecution or other disposition is pending;

(4) A disqualifying offense committed by the applicant. For purposes of this paragraph, an applicant commits a disqualifying offense if the applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, any of the following in any jurisdiction during the 5-year period, or any longer period that the port director deems appropriate for the offense in question, prior to the date of the application submitted under §122.182 or at any time while in possession of an approved Customs access seal:

(i) Forgery of certificates, false marking of aircraft, and other aircraft registration violation (49 U.S.C. 46306);

(ii) Interference with air navigation (49 U.S.C. 46308);

(iii) Improper transportation of a hazardous material (49 U.S.C. 46312);

(iv) Aircraft piracy in the special aircraft jurisdiction of the United States (49 U.S.C. 46502(a));

(v) Interference with flight crew members or flight attendants (49 U.S.C. 46504);

(vi) Commission of certain crimes aboard aircraft in flight (49 U.S.C. 46506);

(vii) Carrying a weapon or explosive aboard aircraft (49 U.S.C. 46505);

(viii) Conveying false information and threats (49 U.S.C. 46507);

(ix) Aircraft piracy outside the special aircraft jurisdiction of the United States (49 U.S.C. 46502(b));

(x) Lighting violations involving transportation of controlled substances (49 U.S.C. 46315);

(xi) Unlawful entry into an aircraft or airport area that serves air carriers