

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 Custom 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 access 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 outside 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 or foreign air carriers contrary to established security requirements (49 U.S.C. 46314);

(xii) Destruction of an aircraft or aircraft facility (18 U.S.C. 32);

(xiii) Murder;

(xiv) Assault with intent to murder;

(xv) Espionage;

(xvi) Sedition;

(xvii) Kidnapping or hostage taking;

(xviii) Treason;

(xix) Rape or aggravated sexual abuse;

(xx) Unlawful possession, use, sale, distribution, or manufacture of an explosive or weapon;

(xxi) Extortion;

(xxii) Armed or felony unarmed robbery;

(xxiii) Distribution of, or intent to distribute, a controlled substance;

(xxiv) Felony arson;

(xxv) Felony involving:

(A) A threat;

(B) Willful destruction of property;

(C) Importation or manufacture of a controlled substance;

(D) Burglary;

(E) Theft;

(F) Dishonesty, fraud, or misrepresentation;

(G) Possession or distribution of stolen property;

(H) Aggravated assault;

(I) Bribery; or

(J) Illegal possession of a controlled substance punishable by a maximum term of imprisonment of more than one year;

(xxvi) Violence at an airport serving international civil aviation (18 U.S.C. 37);

(xxvii) Embezzlement;

(xxviii) Perjury;

(xxix) Robbery;

(xxx) Crimes associated with terrorist activities;

(xxxi) Sabotage;

(xxxii) Assault with a deadly weapon;

(xxxiii) Illegal use or possession of firearms or explosives;

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(xxxiv) Any violation of a U.S. immigration law;

(xxxv) Any violation of a Customs law or any other law administered or enforced by Customs involving narcotics or controlled substances, commercial fraud, currency or financial transactions, smuggling, failure to report, or failure to declare;

(xxxvi) Airport security violations; or

(xxxvii) Conspiracy or attempt to commit any of the offenses or acts referred to in paragraphs (a)(4)(i) through (a)(4)(xxxv) of this section;

(5) Denial or suspension of the applicant's unescorted access authority to a Security Identification Display Area (SIDA) pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency; or

(6) Inability of the applicant's employer or Customs to complete a meaningful background check or investigation of the applicant.

(b) *Notification of denial.* The port director shall give written notification to any person whose application for access to the Customs security area has been denied, fully stating the reasons for denial and setting forth specific appeal procedures. The employer shall be notified in writing that the applicant has been denied access to the area and that the detailed reasons for the denial have been furnished to the applicant. Detailed reasons regarding the denial, however, shall not be furnished to the employer by Customs.

(c) *Appeal of denial.* The denial will be final unless the applicant files with the port director a written notice of appeal within 10 days following receipt of the notice of denial. The notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the statement of the port director. The port director will render his decision on the appeal to the applicant in writing within 30 calendar days of receipt of the notice of appeal and, if the application is denied on appeal, the decision will advise the applicant of the procedures for filing a further appeal pursuant to paragraph (d) of this section.

(d) *Further appeal of denial.* Where the application on appeal is denied by the port director, the applicant may file a

further written notice of appeal with the director of field operations at the Customs Management Center having jurisdiction over the office of the port director within 10 calendar days of receipt of the port director's decision on the appeal. The further notice of appeal must be filed in duplicate and must set forth the response of the applicant to the decision of the port director. The director of field operations will review the appeal and render a written decision. The final decision will be transmitted to the port director and served by him on the applicant.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48985, July 29, 2002]

**§ 122.184 Change of identification; change in circumstances of employee; additional employer responsibilities.**

(a) *Change of identification.* The Customs access seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification card or other medium on which it appears is necessary.

(b) *Change in circumstances of employee.* If, after issuance of a Customs access seal to an employee, any circumstance arises (for example, an arrest or conviction for a disqualifying offense) that constitutes a ground for denial of access to the Customs security area under §122.183(a) or for revocation or suspension of access to the Customs security area and surrender of the Customs access seal under §122.187(a), the employee must within 24 hours advise the port director in writing of that change in circumstance. In the case of an arrest or prosecution for a disqualifying offense listed in §122.183(a)(4), the employee also must within 5 calendar days advise the port director in writing of the final disposition of that arrest or prosecution. In addition, if an airport operator or an aircraft operator suspends an employee's unescorted access authority to a Security Identification Display Area pursuant to regulations promulgated by the U.S. Federal Aviation Administration or other appropriate government agency and the employee also has an approved Customs access seal, the