condensed milk contains not less than 28.0 percent of total milk solids and not less than 8.0 percent of milkfat. The quantity of sugar used is sufficient to prevent spoilage. The finished product shall conform to the requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120).

* * * * *

22. Revise § 58.915 to read as follows:

§ 58.915 Batch or continuous in-container thermal processing equipment.

Batch or continuous in-container thermal processing equipment shall meet the requirements of the Food and Drug Administration for thermally processed low-acid foods packaged in hermetically sealed containers (21 CFR part 113). The equipment shall be maintained in such a manner as to assure control of the length of processing and to minimize the number of damaged containers.

23. Amend § 58.938 by revising paragraph (g) to read as follows:

§ 58.938 Physical requirements and microbiological limits for sweetened condensed milk

* * * * *

(g) *Composition.* Shall meet the minimum requirements of the Food and Drug Administration for sweetened condensed milk (21 CFR 131.120). In addition, the quantity of refined sugar used shall be sufficient to give a sugar-in-water ratio of not less than 61.5 percent.

* * * * *

Authority: (7 U.S.C. 1621–1627)

Dated: July 22, 2002.

A.J. Yates,

Administrator.

[FR Doc. 02–18980 Filed 7–26–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 122

[T.D. 02–40]

RIN 1515–AD04

Access to Customs Security Areas at Airports

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to those provisions of the Customs Regulations that concern standards for employee access to Customs security areas at airports that accommodate international air commerce. The principal amendments set forth in this document involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access, the inclusion of separate procedures for immediate revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. These changes are needed to enhance the security environment at airports in Customs security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks on the United States.

DATES: Interim rule effective July 29, 2002; comments must be submitted by September 27, 2002.

ADDRESSES: Written comments are to be addressed to the U.S. Customs Service, Office of Regulations and Rulings, Attention: Regulations Branch, 1300 Pennsylvania Avenue NW., Washington, DC 20229. Submitted comments may be inspected at U.S. Customs Service, 799 9th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Elizabeth Tritt, Passengers Programs, Office of Field Operations (202–927–0530).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 1986, Customs published in the **Federal Register** (51 FR 4161) T.D. 86–12 setting forth an amendment to the Customs Regulations to require the use and display of a Customs-approved identification card, strip, or seal on identification cards worn by employees at airports accommodating international air commerce. This Customs-approved identification requirement applies to all persons (other than government law enforcement personnel) who are located at, or operate out of, or are employed by, affected airports and who request access to Customs security areas in order to perform functions associated with their employment. Those regulatory requirements were originally contained in § 6.12a of the Customs Regulations (19 CFR 6.12a) but are currently set forth as Subpart S of part 122 of the Customs Regulations (19 CFR part 122).

In the preamble portion of T.D. 86–12 Customs explained the need for, and purpose of, those regulatory provisions as follows: ''Customs finds it necessary to improve integrity and security in authorized inspection areas, due in large measure to the recent sharp increases in threats to airport security posed by terrorist organizations. The current regulations in 19 CFR part 6 are inadequate for controlling access to the Customs security areas to the extent necessary. The arrival of an aircraft from abroad necessitates the services of numerous persons representing various specialties, such as ground crews, refueling personnel, baggage handlers, and food service personnel, among others. While all of these persons may have legitimate business associated with the arrival of an international flight, Customs needs a method by which access to the aircraft and inspection areas will be restricted, as well as some assurance that the service personnel themselves have been found trustworthy by their employers. While the Federal Aviation Administration has general responsibility for security at airports, Customs has determined that it is necessary to amend 19 CFR part 6 to provide Customs with the needed authority and procedures to achieve these goals at the areas under the Customs jurisdiction. The purpose of this amendment is to establish an identification system for all employees whose duties require access to Customs security areas at airports handling international air commerce, with the exception of uniformed Federal, State, and local law enforcement personnel. Because of recent terrorist incidents at foreign airports, threats of violence at U.S. airports, and in an effort to improve the security of these areas by restricting access to authorized employees, Customs will require that employees apply for a Customs approved identification strip or seal to be affixed to existing identification cards once an authorized official of the employer attests that background checks of employment history have been conducted. Customs will issue the identification strip or seal, once satisfied that the issuance of the additional identification will neither endanger the revenue nor threaten the security of the entire security area (which may include the arriving airplane, ramp area, and Customs

baggage and passenger inspection facilities).''

The regulatory provisions contained in Subpart S of part 122 prior to the publication of this document consisted of §§ 122.181 through 122.188 (19 CFR 122.181 through 122.188) which may be summarized as follows:

Section 122.181 set forth a definition of the term ''Customs security area;''

Section 122.182 set forth the basic identification card, strip, or seal requirement (paragraph (a)), outlined certain employer responsibilities (paragraph (b)), set forth identification card, strip, or seal application procedures and employer bond requirements (paragraph (c)), provided for background checks of applicants (paragraph (d)), provided for the issuance of identification cards, strips, or seals to law enforcement officers and other Federal, State, and local officials without applying the paragraph (c) and paragraph (d) requirements (paragraph (e)), prescribed standards for the issuance of replacement identification cards, strips, and seals (paragraph (f)), and set forth standards for notifying Customs and surrendering the identification card, strip, or seal when it was no longer needed (paragraph (g));

Section 122.183 dealt with the denial of applications for access and included provisions regarding grounds for denial (paragraph (a)), notification of denial (paragraph (b)), appeal of denial (paragraph (c)), and further appeal of denial (paragraph (d));

Section 122.184 provided for removal of the identification card, strip, or seal from the employee where, for security reasons, a change in the nature of the identification was necessary;

Section 122.185 required a prompt written report in the event of a loss or theft of an identification card, strip, or seal and provided for replacement in accordance with § 122.182(f);

Section 122.186 provided for the removal and destruction of an identification card, strip, or seal that was presented by a person other than the one to whom it was issued and also provided that an approved identification card, strip, or seal may be removed from an employee by any Customs officer designated by the port director;

Section 122.187 covered the revocation or suspension of access and included grounds for revocation or suspension (paragraph (a)), provided for giving notice of the revocation or suspension to the employee with a copy to the employer (paragraph (b)), permitted the employee to file a written notice of appeal and to request a hearing in the notice of appeal (paragraph (c)), set forth rules for the conduct of a hearing (paragraph (d)), permitted the employee to submit additional written views after the hearing had been held (paragraph (e)), and provided for issuance and service of the decision after the hearing (paragraph (f)); and

Section 122.188 concerned temporary identification cards, strips, and seals and included provisions regarding the conditions for issuance of a temporary card, strip, or seal (paragraph (a)), the period of validity of the temporary card, strip, or seal (paragraph (b)), the application of the section to temporary employees and official visitors (paragraph (c)), and the revocation of a temporary card, strip, or seal and denial of temporary access (paragraph (d)).

The Need for Increased Security Enforcement Measures

The September 11, 2001, terrorist attacks involving four U.S. commercial aircraft underscored the importance of a properly maintained security environment at the nation's airport facilities. The nature of the attacks, which involved the use of aircraft as weapons against persons and property in the United States, and the nature of the perpetrators, who are believed to be affiliated with a terrorist organization that has an almost global network and that has declared its opposition to U.S. foreign policy and presence in the Middle East and its intention to engage in further attacks against the United States, support the conclusion that there is now, if anything, an even greater need for security precautions at airports than there was when the regulations described above were promulgated.

On December 6, 2001, the Federal Aviation Administration (FAA) published in the **Federal Register** (66 FR 63474) a final rule document entitled ''Criminal History Records Checks'' which amended its regulations to require each airport operator and each aircraft operator that has adopted a security program under 14 CFR part 107 or 14 CFR part 108 to conduct fingerprint-based criminal history record checks (CHRCs) for individuals if they have not already undergone CHRCs. These FAA rules, which took effect on the date of publication, apply to those who either have, or apply for, (1) unescorted access authority to the Security Identification Display Area (SIDA) of an airport, (2) authority to authorize others to have unescorted access to the SIDA, and (3) passenger and carry-on property screening functions. In the background portion of this final rule document the FAA first noted the September 11, 2001, terrorist attacks and related potential threats to U.S. civil aviation. The FAA went on to explain that the new rules were necessary because the current employment investigation method was not adequate, in particular, because the present method did not require CHRCs for all individuals. The FAA also noted that, by requiring that all employees in the specified positions undergo a CHRC based on their fingerprints, there may be some individuals who now are in the covered positions who will be disqualified under the resulting new checks.

Following the September 11, 2001, terrorist attacks, Customs similarly initiated a review of the security standards and procedures that apply for purposes of access to the Customs security areas at airports that accommodate international air commerce. That review included, among other things, a review of the existing regulatory standards and an expanded fingerprinting and associated criminal record checks of individuals currently having authorized access to a Customs security area. The review disclosed a number of problems that require immediate regulatory solutions in order to enable Customs to maintain an enhanced security environment at airports in those areas over which Customs must exercise some jurisdiction regarding access. The principal identified problem areas and solutions are as follows:

1. *Problem:* The grounds for denial of applications for access do not adequately reflect security considerations and, particularly as regards the applicant's criminal history, are not sufficiently specific. **SOLUTION:** The regulations should contain, as a basis for denial of access, a general statement regarding risk to public health, interest or safety, national security, or aviation safety. In addition, the regulations should amplify the criminal history grounds for denial of access by including, for example, the detailed list of aircraft-related and other specific violations listed in 14 CFR 107.209 and 14 CFR 108.229 as published by the FAA in the December 6, 2001, final rule document referred to above.

2. *Problem:* The present regulations do not provide an adequate legal framework for ongoing security enforcement regarding the conduct of employees who have access to the Customs security area, particularly with regard to events that occur after the application for approved access has been granted. *Solution:* The regulations should (1) affirmatively state the obligation of the employee to use the approved access only in furtherance of

his employment, (2) impose on an employee with approved access an ongoing obligation to inform Customs of any change in circumstances (for example an arrest or conviction) that would be a ground for denial or revocation or suspension of access and to inform Customs if the employee's access to the SIDA has been suspended under the FAA regulations, and (3) add as grounds for revocation or suspension of access a failure to comply with any of the foregoing requirements. In addition, the regulations should impose an obligation on the employer to report to Customs any change in an employee's circumstances that could affect his right to have access and also to ensure that each employee uses the approved access only in connection with his employment. A failure on the part of the employer to comply with these requirements could result in a claim for liquidated damages under the employer's bond.

3. *Problem:* The procedures for revocation or suspension of an employee's approved access to the Customs security area constitute an obstacle to enhanced security initiatives because they are inefficient, time consuming and burdensome, in principal part due to a provision in the regulations that gives the employee an absolute right to a hearing in connection with an appeal of a revocation or suspension action, even where there is no substantial issue of a material fact to be addressed at the hearing. At a number of locations where Customs performed fingerprinting and associated criminal record checks which disclosed grounds for a revocation or suspension action, in almost every case the affected employee requested a hearing, thus delaying the time at which the employee would lose access (and therefore extending the security risk) and straining the personnel and fiscal resources of Customs due to the costs associated with conducting a formal hearing. *Solution:* The regulations should (1) limit hearings on appeals to those cases in which there is a genuine issue of fact that is material to the revocation or suspension action, similar to the procedure used in courts of law whereby cases involving no issues of fact but rather only issues regarding the construction of the law are resolved in summary fashion on the written pleadings and without oral argument, (2) provide for issuance of access approval for a limited period of time and for reissuance only upon reapplication for a new period, with the new application (which may include fingerprinting and associated criminal record checks) being subject to de novo review, and (3) provide for immediate revocation or suspension of access in emergency situations involving public health, safety, or security, whether or not the affected employee would be entitled to a hearing upon appeal.

Accordingly, this document sets forth amendments to Subpart S of Part 122 of the Customs Regulations in order to address the problems discussed above, and the document also includes a number of other changes not related to security concerns that also represent improvements to those regulatory texts. Similar to the approach taken by the FAA in the December 6, 2001, final rule document referred to above, Customs believes that the immediate and ongoing significance of these security considerations requires that the regulatory amendments take effect on the date of publication in the **Federal Register** even though the document affords the public an opportunity to comment on the regulatory changes prior to publication of a final rule. The regulatory amendments are explained in more detail below except in the case of changes that involve merely minor, non-substantive wording changes.

Explanation of Regulatory Amendments

Before proceeding to a section-by-section discussion of the substantive amendments, it should be noted that throughout the texts the words ''identification card, strip, or seal'' and all variations of those words have been replaced by the words ''Customs access seal'' or ''access seal.'' This change in terminology is simply intended to reflect current practice whereby, upon approval of an application for access to the Customs security area, Customs places a seal on a card or other identification medium issued either by Customs or by the airport authority, air carrier or other employer of the employee to whom access is granted.

Section 122.181

In the first sentence the words ''or departing to'' have been added after the words ''arriving from'' to clarify that the Customs security area also includes airport areas that accommodate outgoing aircraft.

Section 122.182

Paragraph (a) has been revised to incorporate the following changes:

1. In the first sentence, a reference to ''aircraft passengers and crew'' has been added to reflect the Customs practice of not requiring those persons to apply for approved access, because those persons normally pass through the Customs security area only when going to or from an aircraft.

2. The second sentence has been modified by the addition of a requirement that the approved Customs access seal must be used only in furtherance of the employment of the person in whose name it is issued, in accordance with the description of duties submitted by the employer under paragraph (c)(1) of the section, for the reason explained above.

3. In the third sentence, references to immediate surrender of a Customs access seal ''as provided in paragraph (g) of the section'' (that is, when the access seal is simply no longer needed by the employee) and ''for any cause referred to in § 122.187(a)'' (that is, in connection with a revocation or suspension action) have been added to clarify that there are two contexts under the regulations which provide for the surrender of a Customs access seal.

4. Two new sentences have been added at the end to prescribe a 2-year validity period for an approved Customs access seal and to provide for retention beyond the applicable 2-year period only if a new application is filed under paragraph (c)(2) of the section.

In paragraph (b), which concerns employers' responsibilities, the references to bond liability have been removed because they can be more appropriately dealt with elsewhere (see the discussion of new § 122.189 below).

Paragraph (c), which sets forth access application requirements, has also been revised in order to set forth the prior text as paragraph (c)(1) headed ''initial application'' and in order to add a new text as paragraph (c)(2) headed ''reapplication.'' The following points are noted regarding the revised text:

1. In the first sentence of paragraph (c)(1), a requirement has been added regarding submission of a written request and justification for issuance prepared by the applicant's employer which must include a description of the duties to be performed by the employee while in the Customs security area. Customs believes that this requirement is necessary and appropriate because it (1) more clearly addresses the relationship of the applicant to the employer whose business affairs require the employee access, (2) provides additional relevant information to assist Customs in making an informed decision on the application, and (3) will assist Customs in monitoring the employee's activities within the Customs security area to determine whether they are necessary and proper.

2. At the end of paragraph (c)(1), a sentence has been added to cover the submission of fingerprints, proof of

citizenship or residency, and a photograph. These requirements, which were previously in paragraph (d) (which concerns background checks), have been moved to this paragraph because they are more directly related to the application submission process.

3. Paragraph (c)(2) sets forth requirements concerning the new reapplication procedure which must be initiated at least 30 days before the end of the 2-year approval validity period prescribed in paragraph (a) if the employee wishes to retain the approved Customs access seal beyond that 2-year period. The 30-days minimum reapplication period was chosen in order to ensure that Customs will have enough time to review and make a decision on the application before the current validity period lapses. This new paragraph (c)(2) provides that the new application must be filed in the same manner as that specified for an initial application under paragraph (c)(1), including the submission of fingerprints if required by the port director, and that the new application will be subject to a *de novo* review (which may include a background check) as if it were an initial application except that the employer's attestation under paragraph (d) will not be required if there has been no change in the applicant's employment.

Paragraph (d), which concerns background checks, has been revised in order to (1) remove the reference in the first sentence to employees hired on or after November 1, 1985, (2) remove the third sentence regarding employees hired before November 1, 1985, and (3) reflect the transfer of the fingerprint and proof of citizenship or residency provisions to paragraph (c) as discussed above. The removal of the provisions regarding the November 1, 1985, date is necessary because those provisions are out-of-date and because the effect of these provisions, which is to ''grandfather-in'' employees hired before that date as regards the type of employer attestation that must be made, is incompatible with the present heightened security enforcement posture of Customs as reflected in the other regulatory changes contained in this document. Customs further notes that those November 1, 1985, provisions also may not be compatible with the new background check requirements reflected in the December 6, 2001, FAA regulatory changes referred to above.

In paragraph (g), the first sentence (which provides that employers must give notice to Customs and surrender access seals to Customs when they are no longer needed by their employees) has been amended to also require notice and surrender where the 2-year approval validity period under paragraph (a) has expired and a new application under paragraph (c)(2) has not been approved, because Customs believes that this is also consistent with the principle that employers must bear some responsibility for ensuring the proper use of access seals by their employees, and the words ''who no longer requires access'' at the end of the second sentence have been removed to conform to the new wording of the first sentence. In addition, the penultimate sentence of the prior text (which concerned the filing of a summary of information regarding the disposition of access seals on a quarterly or other basis established by the port director) has been removed, see the discussion below regarding new paragraph (c) of § 122.184. Finally, the last sentence of the prior text (which allowed an employee to return to duties in the Customs security area within 1 year without having to file an application under paragraph (c)) has been removed because Customs now believes that an application should be required in that case.

Section 122.183

Paragraph (a), which concerns grounds for the denial of access to the Customs security area, has been revised primarily in order to address the first principal problem area discussed earlier in this document. The following points are noted regarding the changes reflected in the revised text:

1. In the introductory text of the paragraph, the words ''or pose an unacceptable risk to public health, interest or safety, national security, or aviation safety'' have been added after the words ''endanger the revenue or the security of the area.''

2. In paragraph (a)(1), which refers to any cause which would justify suspension or revocation under § 122.187, references to ''a demand for surrender'' and to ''§ 122.182(g)'' have been added to clarify (1) that § 122.187 refers not only to suspension or revocation of access but also to the surrender of the access seal and (2) that the surrender of access seals is also the subject of § 122.182(g). With regard to the latter point, it is noted that under the amended texts a failure to surrender an access seal, if demanded by Customs because the new 2-year approval period has expired and no new application has been approved, would constitute a basis for denial under this provision.

3. In paragraph (a)(2), which under the prior paragraph (a) text was the only other listed ground for denial and referred specifically to evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct, the words ''which establishes * * * such conduct'' have been replaced by the words ''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.'' This wording change was made in consideration of the addition of new paragraph (a)(4) discussed below, and it is noted in this regard that, with the addition of that new paragraph and new paragraph (a)(3) discussed below, the ''probable cause'' standard appears to be more appropriate in the instant context.

4. A new paragraph (a)(3) has been added which refers to a case in which an applicant has been arrested for, or charged with, a disqualifying offense listed under paragraph (a)(4) and disposition of the arrest or charge is pending. Customs believes that this paragraph is necessary to fill in the gap between the investigation stage described in revised paragraph (a)(2) and the disqualifying offense stage described in new paragraph (a)(4). It is also noted that the FAA regulations adopted in the December 6, 2001, final rule document referred to above contain provisions of similar effect (see 14 CFR 107.209(g)(1) and 14 CFR 108.229(g)(1)).

5. A new paragraph (a)(4) has been added which lists, as grounds for denial, disqualifying offenses which an applicant has been convicted of, or found not guilty of by reason of insanity, or has committed any act or omission involving, during the 14 preceding 5-year period (or any longer period as may be appropriate in a specific case) prior to the application or at any time while in possession of a Customs access seal. This paragraph was added to § 122.183 because Customs believes that the issue of established criminal conduct is appropriate for detailed treatment in an application context, and it is noted that under the prior Part 122 texts specific felony or misdemeanor conviction references were contained only in the context of revocation or suspension actions under § 122.187. The paragraph parallels the FAA approach reflected in the December 6, 2001, final rule document in referring to a ''disqualifying'' offense, in covering applicants found not guilty by reason of insanity, in referring to offenses both in the pre-application period and while having approved access, and in setting forth a detailed list of specific disqualifying offenses, including a

number of offenses relating directly to aircraft under Title 49 of the United States Code, for which access may be denied (see 14 CFR 107.209(d) and 14 CFR 108.229(d)). Customs believes that it is useful, wherever practicable, to use similar standards as those of the FAA since the need to address security concerns at airports is universal and the same people will be given access to areas at airports that are concentric or overlapping under the separate approval regimes of the two agencies. However, because the mission of Customs is not in all cases the same as that of the FAA, the new paragraph (a)(4) text also lists some additional offenses not included in the FAA regulations, including offenses that relate directly to a Customs statutory enforcement mandate.

6. A new paragraph (a)(5) has been added which sets forth as a ground for denial the fact that an applicant was denied unescorted access authority to an SIDA, or had his unescorted access authority to an SIDA suspended, pursuant to regulations of the FAA or other government agency. As in the case of new paragraph (a)(4) discussed above, this provision reflects the fact that there are security considerations that are common to Customs and to the FAA. Accordingly, if the FAA denies an application for unescorted access to an SIDA or suspends a person's access to an SIDA and Customs is aware of the FAA action, Customs must deny that person's application for access to the Customs security area because (1) the basic security concerns reflected in the FAA action would also apply in a Customs security area context and (2) granting the application, and thus allowing the person into the Customs security area, would be incompatible with the FAA action from an operational standpoint.

7. Finally, a new paragraph (a)(6) has been added to set forth as a ground for denial the fact that neither the employer nor Customs is able to complete a meaningful background check or investigation of the applicant because relevant records do not exist or are not available. Customs believes that this provision is necessary because the granting of an application should represent a knowledgeable, informed decision and thus should not be made in circumstances where there is a lack of relevant records. Thus, for example, an application could be denied if the applicant has not lived in the United States for a period of time sufficiently long for Customs to make a meaningful verification of any U.S. criminal history and a similar records check in the applicant's prior country of residence cannot be made.

In paragraph (c), which concerns the appeal of a denial, the last sentence has been revised to require the port director to advise the applicant of the procedures for filing a further appeal if the application is denied on appeal.

Paragraph (d), which concerns the further appeal of a denial, has been revised primarily in order to replace the references to the Commissioner (or his designee) with references to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director who denied the application under paragraph (b) and considered the first appeal under paragraph (c). Thus, the further appeal of the denial would no longer be considered at Customs Headquarters in Washington, DC.

Section 122.184

The section heading has been revised and the prior section text has been designated as paragraph (a) in order to accommodate the addition of new paragraphs (b) and (c).

New paragraph (b), which is headed ''change in circumstances of employee,'' imposes on an employee who has approved access to the Customs security area an obligation to advise the port director in writing in the following cases: (1) Within 24 hours, if a circumstance arises that constitutes a ground for denial of access or for revocation or suspension of access and surrender of the employee's Customs access seal; (2) within 5 calendar days, if the employee was arrested or prosecuted for a disqualifying offense and there is a final disposition of that arrest or prosecution; and (3) within 24 hours, if the employee's unescorted access authority to an SIDA is suspended pursuant to the regulations of the FAA or other government agency. Customs believes that these new requirements, which impose an ongoing obligation on the part of each person granted access to the Customs security area to advise Customs of changes that might affect that person's access privilege, are appropriate and necessary for the security of the areas under Customs control. Customs also notes that a similar ongoing reporting requirement regarding disqualifying offenses is contained in the FAA regulations adopted in the December 6, 2001, final rule document referred to above (see 14 CFR 107.209(l)(2) and 14 CFR 108.229(l)(2)).

New paragraph (c), which is headed ''additional employer responsibilities,'' sets forth employer responsibilities that are in addition to those specified for employers under § 122.182. The first sentence requires an employer to report to Customs any known change in an employee's circumstances referred to in new paragraph (b), even if the employee also reports it under paragraph (b); even though this results in a duplicate reporting requirement, Customs believes that this result is justifiable because the overriding consideration is that Customs must have the information in question in order to properly assess the security risk and thus should not have to decide whether one possible source of the information is more appropriate than another. The second and third sentences set forth a quarterly reporting requirement regarding employees who have an approved access seal, including additions to and deletions from the previous report, and in effect replace the quarterly reporting requirement which has been removed from paragraph (g) of § 122.182 as discussed above. The fourth and final sentence, which requires each employer to take appropriate steps to ensure that an employee uses an approved Customs access seal only for employment-related purposes, is a corollary to the employee requirement added to the second sentence of paragraph (a) of § 122.182 as discussed above.

Section 122.187

Paragraph (a), which concerns the grounds for revocation or suspension of access to the Customs security area, has been divided into two subparagraphs, with paragraph (a)(1) constituting an expanded general statement regarding revocation or suspension and paragraph (a)(2) setting forth revised specific grounds for revocation or suspension. The following points are noted regarding the revised paragraph (a) texts:

1. Paragraph (a)(1)(i) requires the port director to immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2).

2. Paragraph (a)(1)(ii) authorizes the port director to propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever in the judgment of the port director it appears, for any ground not specified in paragraph (a)(2), that continued access might ''pose an unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area.'' The quoted language parallels the wording of the introductory text of revised paragraph (a) of § 122.183 regarding access application denials and in effect

replaces prior paragraph (a)(4) of § 122.187 which referred to a circumstance in which continuation of privileges would ''endanger the revenue or security of the area.''

3. Paragraph (a)(2)(i) refers to an approved Customs access seal obtained through fraud or the misstatement of a material fact and thus corresponds to prior paragraph (a)(1). However, a reference to ''probable cause to believe'' has been added to the text because, given the priority that must be given to matters involving airport security, Customs believes that probable cause to believe (rather than actual proof of the fact) is the proper standard. Customs further notes in this regard that an employee's rights can be appropriately protected by the appeal procedure which affords the employee an opportunity to have a hearing if there is a genuine issue of fact that is material to the action taken by Customs.

4. Paragraph (a)(2)(ii) refers to employees convicted of crimes and thus corresponds to prior paragraph (a)(2). However, the new text differs from the prior text by (1) including a reference to an employee ''found not guilty by reason of insanity,'' (2) including ''probable cause to believe'' language, and (3) replacing the recitation of specific crimes by a cross-reference to ''an offense listed in § 122.183(a)(4).'' This text reflects the view of Customs that the commission of any ''disqualifying offense'' on which a denial of an application for access may be based under revised paragraph (a) of § 122.183 also should be a basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

5. Paragraph (a)(2)(iii), which has no counterpart in the prior texts, refers to an employee who has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending. It thus parallels the application denial terms of new paragraph (a)(3) of § 122.183.

6. Paragraph (a)(2)(iv), which has no counterpart in the prior texts, refers to an employee who has engaged in any other conduct (that is, conduct other than that covered by paragraph (a)(2)(ii) or (iii)) that would constitute a ground for denial of an application for access under § 122.183. This provision is the necessary counterpart of paragraph (a)(1) of § 122.183 in that it reflects the position of Customs that any ground for denial of an application for access to the Customs security area should also constitute a valid basis for revocation or suspension of access and surrender of the Customs access seal under § 122.187.

7. Paragraph (a)(2)(vi), which has no counterpart in the prior texts, refers to an employee who uses the approved access seal in connection with a matter not related to his employment or not constituting a duty described in the employer justification required by paragraph (c)(1) of § 122.182. This provision relates specifically to the employee requirement regarding proper use of the access seal which was added to the second sentence of paragraph (a) of § 122.182 as discussed above.

8. In paragraph (a)(2)(viii), which corresponds to prior paragraph (a)(6) and concerns bond sufficiency, the words ''for all employees of the bond holder'' have been added at the beginning of the text to clarify that, in the context of a revocation or suspension of access, bond sufficiency relates to all employees of the principal on the bond (that is, the employer) rather than to only one individual employee.

9. Paragraph (a)(2)(x), which has no counterpart in the prior texts, refers to the failure of an employee or employer to notify Customs of a change in circumstances under new paragraph (b) or (c) of § 122.184 and the failure of an employee to report the loss or theft of a Customs access seal as required by § 122.185.

Paragraph (b), which concerns the notice of revocation or suspension, represents a significant expansion of the prior text in order to address some of the principal problems mentioned earlier in this document. The changes involve both a modification of the prior paragraph (b) text and the addition of two new paragraphs (b)(1) and (b)(2). The following points are noted regarding these changes:

1. With regard to the prior text, which has become the introductory text of paragraph (b), a reference to demanding surrender of the Customs access seal has been added in the first sentence because this is an integral part of a revocation or suspension action. In addition, the text has been shortened and at the end provides that the notice of revocation or suspension will indicate whether the action is effective immediately or is proposed.

2. New paragraph (b)(1), which is headed ''immediate revocation or suspension,'' provides that the port director will issue a final notice of revocation or suspension when the revocation or suspension of access and surrender of the Customs access seal are effective immediately. The paragraph also allows the port director or his designee to deny physical access to the Customs security area and demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in his judgment an emergency situation involving public health, safety, or security is involved. In the latter case, a final notice of revocation or suspension would be issued to the affected employee within 10 days of the emergency action. The text also provides that the final notice of revocation or suspension issued under this paragraph will state the specific grounds for the immediate action, will direct the employee to immediately surrender the access seal if he has not already done so, and will advise the employee that he may pursue one of the following two options: (1) Submit a new application for a Customs access seal on or after the 180th day after the date of the final notice of revocation or suspension; or (2) file a written administrative appeal with the port director in accordance with paragraph (c) within 30 days of the date of the final notice of revocation or suspension. Finally, the text provides that, if the employee chooses to appeal, the appeal may request that a hearing be held in accordance with paragraph (d) but in that case must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action. These new provisions regarding immediate revocation or suspension have been included to address one of the security and related concerns outlined in the third principal problem area mentioned earlier in this document.

3. New paragraph (b)(2), which is headed ''proposed revocation or suspension,'' is the alternative to an immediate action under paragraph (b)(1). Paragraph (b)(2)(i) concerns issuance of the notice of proposed revocation or suspension and provides that the notice will state the specific grounds for the proposed action, will inform the employee that he may continue to have access to the Customs security area and retain his access seal pending issuance of a final notice under paragraph (b)(2)(ii), and will advise the employee that he may file a written response with the port director within 10 days and may ask for a meeting with the port director to discuss the proposed action. Paragraph (b)(2)(ii) concerns the issuance of a notice of final determination regarding the employee's right of access to the Customs security area. It provides that if the employee does not respond to the notice of proposed action, or if the employee files

a timely response and the port director's final determination is adverse to the employee, the port director will issue a final notice of revocation or suspension within 30 days of the notice of proposed action, or within 30 days of receipt of the employee's response, which states the specific grounds for the action, directs the employee to immediately surrender the Customs access seal, and advises the employee that he may choose to pursue one of the two options specified under paragraph (b)(1), that is, reapplication or appeal. These paragraph (b)(2) provisions are not directly related to the security concerns that are the primary focus of this document, but Customs believes that they represent a distinct due process improvement over the prior proposed revocation or suspension notice procedures.

Paragraph (c), which concerns appeal procedures, represents a significant expansion of the prior text primarily in order to address the appeal hearing issue referred to in the third principal problem area outlined earlier in this document. The changes involve redesignation of the prior paragraph (c) text as paragraph (c)(1) with the heading ''filing of appeal'' and the addition of two new paragraphs (c)(2) and (c)(3). The following points are noted regarding redesignated paragraph (c)(1) and new paragraphs (c)(2) and (c)(3):

1. In redesignated paragraph (c)(1), the last sentence regarding requesting a hearing in the notice of appeal has been replaced by a new sentence that gives the port director discretion to allow more time for the employee to submit information in support of the appeal.

2. New paragraph (c)(2), which is headed ''action by the port director,'' provides that if the appellant requests a hearing, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f). On the other hand, if no hearing is requested or if a requested hearing is not required, no hearing will be held and the port director will forward the administrative record, together with the port director's response to any statements made in the notice of appeal, to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal under paragraph (c)(3).

3. New paragraph (c)(3), which is headed ''action by the director,'' provides for issuance of a written decision on the appeal by the director of field operations within 30 days based on the administrative record forwarded by the port director under paragraph (c)(2). The paragraph provides for transmittal of the decision to the port director for service on the employee and states that the decision on the appeal will constitute the final administrative action on the matter.

In paragraph (d), which concerns hearing procedures, a new sentence has been added at the beginning to restate the rule regarding when a hearing will be held, that is, only when requested in an appeal and only if the affected employee demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. In addition, except as regards designation of the hearing officer, all references to ''the Commissioner or his designee'' have been replaced by references to ''the director of field operations'' who will receive the appropriate record from the hearing officer for purposes of rendering a decision on the appeal.

The following changes have been made to paragraph (e) which provides for the submission of additional written views following the hearing: (1) References to the Commissioner or his designee in the prior text have been replaced by references to the director of field operations; (2) the words ''the employee'' in the prior text have been replaced by ''either party'' because Customs believes that both the employee and the government should have the opportunity to submit additional written views; (3) a sentence has been added to require that a copy of a submission be provided to the other party; and (4) two sentences have been added at the end to provide that the other party may within 10 days file a reply to a submission with the director of field operations, with a copy being provided to the other party, and to provide that no further submissions will be accepted. These changes have been included for due process or other procedural purposes and are not related to the security concerns addressed elsewhere in this document.

In paragraph (f), which concerns issuance of the decision after a hearing, the first sentence has been changed by the addition of a reference to consideration of ''any additional written submissions and replies made under paragraph (e)'' and by providing that the decision will be made by the director of field operations rather than by the Commissioner or his designee. In addition, a sentence has been added at the end stating that a decision on an appeal rendered under that paragraph will constitute the final administrative action on the matter. These procedural changes are also not related to security concerns.

New § 122.189

This new section, which is headed ''bond liability,'' is intended to clarify that a principal may face consequences for a failure to comply with the conditions of the bond required under § 122.182(c) which include an obligation to comply with the Customs Regulations applicable to Customs security areas at airports. This new section refers specifically to an employer because an employer would be a principal on the bond to whom specific requirements apply under § 122.182(b) and under new § 122.184(c).

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Office of Regulations and Rulings, U.S. Customs Service, 799 9th Street NW., Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 572–8768.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes contained in this document are primarily intended to enhance the security environment at airports in those areas designated as Customs security areas. The amendments promote public safety and airport security and therefore are in the public interest. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim

regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515–0026.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in § 122.182. This information is used by Customs to determine whether an individual's application for access to a Customs security area should be granted, to monitor current use of the access privilege by individuals, to determine whether an individual has engaged in conduct that might warrant revocation or suspension of access, and to determine whether access should be granted on a temporary basis. The likely respondents are individuals and business organizations including aircraft operators, airport operators, and subcontractors of aircraft and airport operators.

Estimated annual reporting and/or recordkeeping burden: 9,750 hours.

Estimated average annual burden per respondent/recordkeeper: 13 minutes.

Estimated number of respondents and/or recordkeepers: 30,000.

Estimated annual frequency of responses: 1.5.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, DC 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

Drafting Information

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Airports, Air transportation, Bonds, Customs duties and inspection, Penalties, Reporting and recordkeeping requirements, Security measures, Surety bonds.

Amendments to the Regulations

For the reasons set forth in the preamble, part 122, Customs Regulations (19 CFR part 122), is amended as set forth below.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. In § 122.181, the first sentence is amended by adding after the words ''arriving from'' the words '', or departing to,''.

3. In § 122.182:

a. Paragraph (a) is revised;

b. Paragraph (b) is amended by removing the words ''and liability'' in the paragraph heading and by removing the last sentence;

c. Paragraphs (c) and (d) are revised;

d. The first sentence of paragraph (e) is amended by removing the words ''identification card, strip, or seal'' and adding, in their place, the words ''Customs access seal'';

e. Paragraph (f) is amended by removing the word ''identification'' in the paragraph heading and adding, in its place, the words ''access seal'', by removing the words ''identification card, strip or seal'' in the introductory text and adding, in their place, the words ''Customs access seal'', and by removing the words ''identification card, strip, or seal'' in paragraph (f)(4) and adding, in their place, the words ''Customs access seal''; and

f. Paragraph (g) is amended by removing the word ''cards'' in the paragraph heading and adding, in its place, the words ''access seal'', by adding the words ''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,'' in the first sentence after the words ''or other reason,'', by removing the words ''identification card, strip, or seal'' in the first and second sentences and adding, in their place, the words ''Customs access seal'', by removing the words ''who no longer requires access'' at the end of the second sentence, and by removing the last two sentences.

The revisions read as follows:

§ 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.

* * * * *

(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 29 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.

* * * * *

4. In § 122.183, paragraph (a), the last sentence of paragraph (c), and paragraph (d) are revised to read as follows:

§ 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 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 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;
(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.

* * * * *

(c) * * * 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.

5. Section 122.184 is revised to read as follows:

§ 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 36 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 employee must within 24 hours advise the port director in writing of the fact of, and basis for, the suspension.

(c) *Additional employer responsibilities.* If an employer becomes aware of any change in the circumstances of its employee as described in paragraph (b) of this section, the employer must immediately advise the port director of that fact even though the employee may have separately reported that fact to the port director under paragraph (b) of this section. In addition, each employer must submit to the port director during the first month of each calendar quarter a report setting forth a current list of all its employees who have an approved Customs access seal. The quarterly report must list separately all additions to, and deletions from, the previous quarterly report. Moreover, each employer must take appropriate steps to ensure that an employee uses an approved Customs access seal only in connection with activities relating to his employment.

6. Section 122.185 is revised to read as follows:

§ 122.185 Report of loss or theft of Customs access seal.

The loss or theft of an approved Customs access seal must be promptly reported in writing by the employee to the port director. The Customs access seal may be replaced, as provided in § 122.182(f).

7. Section 122.186 is revised to read as follows:

§ 122.186 Presentation of Customs access seal by other person.

If an approved Customs access seal is presented by a person other than the one to whom it was issued, the Customs access seal will be removed and destroyed. An approved Customs access seal may be removed from an employee by any Customs officer designated by the port director.

8. Section 122.187 is revised to read as follows:

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access*—(1) *General.* The port director:

(i) Must immediately revoke or suspend an employee's access to the Customs security area and demand the immediate surrender of the employee's approved Customs access seal for any ground specified in paragraph (a)(2) of this section; or

(ii) May propose the revocation or suspension of an employee's access to the Customs security area and the surrender of the employee's approved Customs access seal whenever, in the judgment of the port director, it appears for any ground not specified in paragraph (a)(2) of this section that continued access might pose an

unacceptable risk to public health, interest or safety, national security, aviation safety, the revenue, or the security of the area. In this case the port director will provide the employee with an opportunity to respond to the notice of proposed action.

(2) *Specific grounds.* Access to the Customs security area will be revoked or suspended, and surrender of an approved Customs access seal will be demanded, in any of the following circumstances:

(i) There is probable cause to believe that an approved Customs access seal was obtained through fraud, a material omission, or the misstatement of a material fact;

(ii) The employee is or has been convicted of, or found not guilty of by reason of insanity, or there is probable cause to believe that the employee has committed any act or omission involving, an offense listed in § 122.183(a)(4);

(iii) The employee has been arrested for, or charged with, an offense listed in § 122.183(a)(4) and prosecution or other disposition of the arrest or charge is pending;

(iv) The employee has engaged in any other conduct that would constitute a ground for denial of access to the Customs security area under § 122.183;

(v) The employee permits the approved Customs access seal to be used by any other person or refuses to openly display or produce it upon the proper demand of a Customs officer;

(vi) The employee uses the approved Customs access seal in connection with a matter not related to his employment or not constituting a duty described in the written justification required by § 122.182(c)(1);

(vii) The employee refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation;

(viii) For all employees of the bond holder, if the bond required by § 122.182(c) is determined to be insufficient in amount or lacking sufficient sureties, and a satisfactory new bond with good and sufficient sureties is not furnished within a reasonable time;

(ix) The employee no longer requires access to the Customs security area for an extended period of time at the airport of issuance because of a change in duties, termination of employment, or other reason; or

(x) The employee or employer fails to provide the notification of a change in circumstances as required under § 122.184(b) or (c) or the employee fails to report the loss or theft of a Customs access seal as required under § 122.185.

(b) *Notice of revocation or* suspension. The port director will revoke or suspend access to the Customs security area and demand surrender of the Customs access seal by giving notice of the revocation or suspension and demand in writing to the 40 employee, with a copy of the notice to the employer. The notice will indicate whether the revocation or suspension is effective immediately or is proposed.

(1) *Immediate revocation or suspension.* When the revocation or suspension of access and the surrender of the Customs access seal are effective immediately, the port director will issue a final notice of revocation or suspension. The port director or his designee may deny physical access to the Customs security area and may demand surrender of an approved Customs access seal at any time on an emergency basis prior to issuance of a final notice of revocation or suspension whenever in the judgment of the port director or his designee an emergency situation involving public health, safety, or security is involved and, in such a case, a final notice of revocation or suspension will be issued to the affected employee within 10 calendar days of the emergency action. A final notice of revocation or suspension will state the specific grounds for the immediate revocation or suspension, direct the employee to immediately surrender the Customs access seal if that Customs access seal has not already been surrendered, and advise the employee that he may choose to pursue one of the following two options:

(i) Submit a new application for an approved Customs access seal, in accordance with the provisions of § 122.182(c), on or after the 180th calendar day following the date of the final notice of revocation or suspension; or

(ii) File a written administrative appeal of the final notice of revocation or suspension with the port director in accordance with paragraph (c) of this section within 30 calendar days of the date of the final notice of revocation or suspension. The appeal may request that a hearing be held in accordance with paragraph (d) of this section, and in that case the appeal also must demonstrate that there is a genuine issue of fact that is material to the revocation or suspension action.

(2) *Proposed revocation or suspension*—(i) *Issuance of notice.* When the revocation or suspension of access and the surrender of the Customs access seal is proposed, the port director will issue a notice of proposed revocation or suspension. The notice of proposed revocation or suspension will state the specific grounds for the proposed action, inform the employee that he may continue to have access to the Customs security area and may retain the Customs access seal pending issuance of a final notice under paragraph (b)(2)(ii) of this section, and advise the employee that he may file with the port director a written response addressing the grounds for the proposed action within 10 calendar days of the date the notice of proposed action was received by the employee. The employee may respond by accepting responsibility, explaining extenuating circumstances, and/or providing rebuttal evidence. The employee also may ask for a meeting with the port director or his designee to discuss the proposed action.

(ii) *Final notice*—(A) *Based on nonresponse.* If the employee does not respond to the notice of proposed action, the port director will issue a final notice of revocation or suspension within 30 calendar days of the date the notice of proposed action was received by the employee. The final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may 42 choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(B) *Based on response.* If the employee files a timely response, the port director will issue a final determination regarding the status of the employee's right of access to the Customs security area within 30 calendar days of the date the employee's response was received by the port director. If this final determination is adverse to the employee, then the final notice of revocation or suspension will state the specific grounds for the revocation or suspension, direct the employee to immediately surrender the Customs access seal, and advise the employee that he may choose to pursue one of the two options specified in paragraphs (b)(1)(i) and (ii) of this section.

(c) *Appeal procedures*—(1) *Filing of appeal.* The employee may file a written appeal of the final notice of revocation or suspension with the port director within 10 calendar days following receipt of the final notice of revocation or suspension. The appeal must be filed in duplicate and must set forth the response of the employee to the statement of the port director. The port director may, in his discretion, allow the employee additional time to submit documentation or other information in support of the appeal.

(2) *Action by port director*—(i) *If a hearing is requested.* If the appeal requests that a hearing be held, the port director will first review the appeal to determine whether there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required because the port director finds that there is a genuine 43 issue of fact that is material to the revocation or suspension action, a hearing will be held, and a decision on the appeal will be rendered, in accordance with paragraphs (d) through (f) of this section. If the port director finds that there is no genuine issue of fact that is material to the revocation or suspension action, no hearing will be held and the port director will forward the administrative record as provided in paragraph (c)(2)(ii) of this section for the rendering of a decision on the appeal under paragraph (c)(3) of this section.

(ii) *CMC review.* If no hearing is requested or if the port director finds that a requested hearing is not required, following receipt of the appeal the port director will forward the administrative record to the director of field operations at the Customs Management Center having jurisdiction over the office of the port director for a decision on the appeal. The transmittal of the port director must include a response to any disputed issues raised in the appeal.

(3) *Action by the director.* Following receipt of the administrative record from the port director, the director of field operations will render a written decision on the appeal based on the record forwarded by the port director. The decision will be rendered within 30 calendar days of receipt of the record and will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

(d) *Hearing.* A hearing will be conducted in connection with an appeal of a final notice of revocation or suspension of access to the Customs security area only if the 44 affected employee in writing requests a hearing and demonstrates that there is a genuine issue of fact that is material to the revocation or suspension action. If a hearing is required, it must be held before a hearing officer designated by the Commissioner, or his designee. The employee will be notified of the time and place of the hearing at least 5 calendar days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in the proceeding, including substantiation of charges and the answer to the charges, must be presented. Both parties will have the right of cross'examination. A stenographic record of the proceedings will be made upon request and a copy furnished to the employee. At the conclusion of the proceedings or review of a written appeal, the hearing officer must promptly transmit all papers and the stenographic record to the director of field operations, together with the recommendation for final action. If neither the employee nor his attorney appears for a scheduled hearing, the hearing officer must record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer must promptly transmit all papers, together with his recommendations, to the director of field operations.

(e) *Additional written views.* Within 10 calendar days after delivery of a copy of the stenographic record of the hearing to the director of field operations, either party may submit to the director of field operations additional written views and arguments on matters in the record. A copy of any submission will be provided to the other party. Within 10 calendar days of receipt of the copy of the submission, the other party may file a reply with the director of field operations, and a copy of the reply will be provided to the other party. No further submissions will be accepted.

(f) *Decision.* After consideration of the recommendation of the hearing officer and any additional written submissions and replies made under paragraph (e) of this section, the director of field operations will render a written decision. The decision will be transmitted to the port director and served by the port director on the employee. A decision on an appeal rendered under this paragraph will constitute the final administrative action on the matter.

9. In § 122.188:

a. The section heading is amended by removing the word ''identification'' and adding, in its place, the words ''Customs access seal'';

b. Paragraph (a) is amended by removing the words ''identification card, strip, or seal'' in two places in the first sentence and adding, in their place, the words ''Customs access seal'' and by removing the words ''identification card'' in the last sentence and adding, in their place, the words ''Customs access seal'';

c. Paragraph (b) is amended by removing the words ''identification card, strip, or seal'' wherever they appear and adding, in their place, the words ''Customs access seal'';

d. Paragraph (c) is amended by removing the words ''identification card, strip, or seal'' in the second and third sentences and adding, in their place, the words ''Customs access seal'' and by removing the words ''identification cards, strips, or seals'' in the last sentence and adding, in their place, the words ''Customs access seal''; and

e. Paragraph (d) is amended by removing the words ''identification card, strip, or seal'' wherever they appear and adding, in their place, the words ''Customs access seal''.

10. New § 122.189 is added to read as follows:

§ 122.189 Bond liability.

Any failure on the part of a principal to comply with the conditions of the bond required under § 122.182(c), including a failure of an employer to comply with any requirement applicable to the employer under this subpart, will constitute a breach of the bond and may result in a claim for liquidated damages under the bond.

Robert C. Bonner,

Commissioner of Customs.

Approved: July 24, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–063]

Safety Zones; Annual Fireworks Events in the Captain of the Port Detroit Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of regulation.

SUMMARY: The Coast Guard is implementing safety zones for annual fireworks displays in the Captain of the Port Detroit Zone during August 2002. This action is necessary to provide for the safety of life and property on navigable waters during these events. These zones will restrict vessel traffic from a portion of the Captain of the Port Detroit Zone.

DATES: The safety zone for the Maritime Day Fireworks, occurring in Marine City, MI, will be enforced from 9:30 p.m. until 11 p.m. on August 10, 2002. The safety zone for the Venetian