

(4) Loss or theft of the identification card, strip, or seal (see § 122.185 of this part).

(g) *Surrender of cards.* 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, the employer shall notify the port director in writing, at the time of such change, and shall return the identification card, strip, or seal to Customs. The notification shall include information regarding the disposition of the approved identification card, strip, or seal of the employee who no longer requires access. A summary of such information shall be filed quarterly or at such shorter intervals as established by the port director. If the employee returns to duties in the Customs security area at the airport for the same employer within 1 year, a Customs Form 3078, as required in § 122.182(c), need not be submitted.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 93-18, 58 FR 15773, Mar. 24, 1993]

§ 122.183 Denial of access.

(a) *Grounds for denial.* An approved identification card, strip, or seal shall not be issued to any person whose employment necessitates access to the Customs security area and whose access will, in the judgment of the port director, endanger the revenue or the security of the area. Grounds for denial of access shall include but are not limited to:

(1) Any cause which would justify suspension or revocation of the identification card, strip, or seal under the provisions of § 122.187 of this Part; or

(2) Evidence of a pending or past investigation which establishes criminal, or dishonest conduct, or a verified record of such conduct.

(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 shall render his decision on the appeal to the applicant within 30 days of receipt of the notice of appeal.

(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 to the Commissioner of Customs within 10 days of receipt of the port director's decision on the appeal. The further notice of appeal shall be filed in duplicate and shall set forth the response of the applicant to the decision of the port director. The Commissioner or his designee shall review the appeal and render a written decision. The final decision shall be transmitted to the port director and served by him on the applicant.

§ 122.184 Change of identification.

The identification card, strip, or seal may be removed from the employee by the port director where, for security reasons, a change in the nature of the identification is necessitated.

§ 122.185 Report of loss or theft of identification cards.

The loss or theft of an identification card, strip, or seal shall be promptly reported in writing by the employee to the port director. The card, strip, or seal may be replaced, as provided in § 122.182(f) of this part.

§ 122.186 Presentation of identification by other person.

If an approved identification card, strip, or seal is presented by a person other than the one to whom it was issued, the identification card, strip, or seal shall be removed and destroyed. An approved identification card, strip,

or seal may be removed from an employee by any Customs officer designated by the port director.

§ 122.187 Revocation or suspension of access.

(a) *Grounds for revocation or suspension of access.* The port director may revoke or suspend access to the Customs security area and demand that the identification card, strip, or seal be surrendered in the following instances:

(1) The approved identification card, strip, or seal was obtained through fraud or the misstatement of a material fact;

(2) The employee is convicted of a felony or convicted of a misdemeanor involving theft, smuggling, or any theft connected crime;

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

(4) The continuation of privileges would, in the judgment of the port director, endanger the revenue or security of the area;

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

(6) The bond required by § 122.182(c) of this part 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.

(7) 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.

(b) *Notice.* The port director shall suspend or revoke access to the Customs security area by giving notice of the proposed action in writing to the employee, with a copy of the notice to the employer. The notice shall be in the form of a statement specifically setting forth the grounds for revocation or suspension of the privilege and shall be final and conclusive upon the employee, unless a written notice of appeal as provided in paragraph (c) of this section is filed with the port director.

(c) *Appeal.* The employee may file a written notice of appeal of the revocation or suspension within 10 days following receipt of the notice of revocation or suspension. The notice of appeal shall be filed in duplicate and shall set forth the response of the employee to the statement of the port director. A hearing may be requested in the notice of appeal.

(d) *Hearing.* If a hearing is requested, it shall be held before a hearing officer designated by the Commissioner, or his designee, within 30 days following the request. The employee shall be notified of the time and place of the hearing at least 5 days before the hearing. The employee may be represented by counsel at the revocation or suspension hearing. All evidence and testimony of witnesses in such proceeding, including substantiation of charges and the answer thereto, shall be presented. Both parties shall have the right of cross-examination. A stenographic record of the proceedings shall 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 or the port director shall promptly transmit all papers and the stenographic record to the Commissioner or his designee, together with the recommendation for final action. If neither the employee nor his attorney appear for a scheduled hearing, the hearing officer shall record that fact, accept any appropriate testimony, and conclude the hearing. The hearing officer shall promptly transmit all papers, together with his recommendations, to the Commissioner or his designee.

(e) *Additional written views.* Within 10 days after delivery of a copy of the stenographic record of the hearing to the Commissioner, or his designee, the employee may submit to the Commissioner, or his designee, additional written views and arguments on matters in the record.

(f) *Decision.* After consideration of the recommendation of the hearing officer or the port director, the Commissioner, or his designee, shall render a written decision. The decision shall be transmitted to the port director and served by the port director on the employee.