

§ 123.76 Authorization by Customs for participants to use certain drivers.

(a) *Responsibilities of LBCIP participants.* An LBCIP participant is required, pursuant to §123.73 of this part, to list the drivers designated to transport merchandise into the United States for the carrier to enable Customs to conduct background checks. An LBCIP participant is also required, pursuant to §123.72 of this part, to conduct, to the extent allowed by law, employment and criminal history checks on all personnel designated to participate in the LBCIP; these personnel include drivers.

(b) *Authorization of drivers by Customs.* Customs may not approve a carrier for participation in the LBCIP if it determines that there is evidence that a driver designated by a carrier has been involved in criminal or dishonest conduct or it may request that the carrier not use that driver before approving the carrier for participation. Once a carrier has been accepted in the LBCIP, Customs may determine to cancel a particular driver's authorization to transport merchandise for a LBCIP carrier for the reasons set forth in paragraph (c) of this section.

(c) *Reasons for cancellation of driver's authorization.* Customs may cancel a driver's authorization to transport merchandise for an LBCIP participant for any of the following reasons:

(1) The designated driver is indicted for, convicted of, or has committed acts which would constitute any felony or misdemeanor under United States Federal or State law. In the absence of an indictment, conviction, or other legal process, the port director must have probable cause to believe the proscribed acts occurred;

(2) The designated driver allows an unauthorized person or entity to use his LBCIP certificate or other approved form of identification;

(3) The designated driver misuses authorized conveyances;

(4) The designated driver refuses or otherwise fails to follow any proper order of a Customs officer or any Customs order, rule, or regulation; or

(5) The designated driver fails to operate in accordance with the terms of the written agreement.

(d) *Notice; rights of driver.* (1) *If driver not acceptable to Customs at time of review of carrier's application.* When Customs notifies a carrier-applicant, pursuant to §123.74 of this part, of its nonselection into the LBCIP because of conduct committed by a driver designated by the carrier or when Customs conditionally approves a carrier-applicant's participation in the LBCIP, but does not approve a driver designated on the application to be authorized to transport merchandise under the LBCIP, Customs will also notify the driver of the decision in writing and recite the driver's appeal rights under paragraph (e) of this section.

(2) *If driver's authorization cancelled.* When Customs makes a determination to cancel the authorization of a particular designated driver, pursuant to §123.76(b) of this section, Customs will notify both the carrier-participant and the driver of the decision in writing; the notice to the driver will recite the driver's appeal rights under paragraph (e) of this section.

(e) *Appeal rights of drivers.* Drivers who receive a notice of nonselection or cancellation and who wish to appeal the decision shall file a written appeal with the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, Washington, D.C. 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the driver's responses to the grounds specified by the port director in the notice. Within 30 working days of receipt of the appeal, the Assistant Commissioner, or his designee, shall make a determination regarding the appeal and notify the applicant in writing.

Subpart I—Miscellaneous Provisions**§ 123.81 Merchandise found in building on the boundary.**

When any merchandise on which the duty has not been paid or which was imported contrary to law is found in any building upon or within 10 feet of the boundary line between the United States and Canada or Mexico, such merchandise shall be seized and a report of the facts shall be made to the Commissioner. With his approval the