

§ 122.175 Exemption from penalties.

Should a controlled substance be introduced into the United States or discovered aboard an aircraft owned or operated by a participating carrier, or in cargo carried by a participating carrier, on a route identified by the carrier as one participating in the ACSPP and which has been approved by Customs, the participating air carrier shall be considered to have met the test of highest degree of care and diligence required under law, and shall not be subject to the penalty or seizure provisions of the Tariff Act of 1930, as amended, if the carrier establishes at an oral presentation before the port director or his designee, that the carrier was not grossly negligent nor engaged in willful misconduct, and that it had complied with all the provisions of these regulations.

§ 122.176 Removal from ACSPP.

(a) *Grounds for removal from ACSPP.* The Assistant Commissioner, Office of Field Operations, may revoke or suspend the privilege of operating as a member of the ACSPP if:

(1) Acceptance into the program was gained through fraud or the misstatement of a material fact;

(2) The carrier refuses or neglects to obey any proper order of a Customs officer or any Customs order, rule, or regulation relative to its cooperation within the program;

(3) An officer of the carrier or corporation which has been accepted into the program is convicted of a felony or misdemeanor involving theft, smuggling, or other theft-connected crime which was committed in his or her official capacity as an officer of the carrier, or is convicted of any Customs-related crime;

(4) The carrier fails to retain merchandise which has been designated for examination;

(5) The carrier does not provide secure facilities or properly safeguard merchandise within its area of control; or

(6) The carrier fails to observe any of the procedures which it had set forth in the SOP which served as the basis for the carrier's acceptance into the program; and

(7) The carrier has been notified in writing that it has been found in non-compliance with a provision of the program and has failed to correct such noncompliance after having been given a reasonable opportunity to correct such noncompliance.

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

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

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

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

Subpart S—Access to Customs Security Areas

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

§ 122.181 Definition of Customs security area.

For purposes of this section, the term "Customs security area" means the Federal inspection services area at any airport accommodating international air commerce designated for processing passengers, crew, their baggage and effects arriving from, or departing to,

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foreign countries, as well as the aircraft deplaning and ramp area and other restricted areas designated by the port director. These areas will be posted as restricted to the extent possible and are established for the purpose of prohibiting unauthorized entries or contact with persons or objects.

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

§ 122.182 Security provisions.

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

(b) *Employers responsibility.* Employers operating in Customs airport security areas shall advise all employees of

the provisions of the Customs regulations relative to those areas, require employees to familiarize themselves with those provisions and insure employee compliance. The employer shall also advise the port director of any changes of employment pursuant to §122.182(g).

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

(i) The port director may require the applicant to submit fingerprints on form FD–258 or on any other approved medium either at the time of, or following, the filing of the application. If required, the port director will inform the applicant of the current Federal Bureau of Investigation user fee for conducting fingerprint checks and the