

(6) The carrier-participant fails to operate in accordance with the terms of the written agreement; or

(7) Continuation of LBCIP privileges would endanger the revenue or security of the Customs area in the judgment of the port director.

(b) *Notice.* When a decision revoking participation has been made, the port director shall notify the carrier-participant of the decision in writing. The notice of revocation shall clearly state the reason(s) for revocation and recite the applicant's appeal rights under paragraph (c) of this section.

(c) *Appeal of decision.* Carrier-participants that receive a notice of revocation 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, DC 20229, within 10 calendar days of receipt of the notice. The appeal shall be filed in duplicate and shall set forth the carrier'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.

§ 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 prescribed 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 non-selection 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 building or that portion thereof which is within the United States shall be taken down or removed. The provisions of subpart B of part 162, of this chapter shall be applicable to the search of any such building.

[T.D. 70-121, 35 FR 8215, May 26, 1970, as amended by T.D. 72-211, 37 FR 16487, Aug. 15, 1972. Redesignated by T.D. 99-2, 64 FR 31, Jan. 4, 1999]

§ 123.82 Treatment of stolen vehicles returned from Mexico.

Port directors shall admit without entry and payment of duty allegedly stolen or embezzled vehicles, trailers, airplanes, or component parts of any of them, under the provisions of The Convention between the United States of America and the United Mexican States for the Recovery and Return of Stolen or Embezzled Vehicles and Aircraft (Treaties and Other International Acts Series [TIAS] 10653), of June 28, 1983, if accompanied by a letter from the U.S. Embassy in Mexico City containing:

(a) A statement that the Embassy is satisfied from information furnished it that the property is stolen property being returned to the U.S. under the provisions of the convention between the U.S. and Mexico concluded January 15, 1981, and

(b) An adequate description of the property for identification purposes.

[T.D. 86-118, 51 FR 22515, June 20, 1986. Redesignated by T.D. 99-2, 64 FR 31, Jan. 4, 1999]

Subpart J—Advance Information for Cargo Arriving by Rail or Truck

SOURCE: CBP Dec. 03-32, 68 FR 68173, Dec. 5, 2003, unless otherwise noted.

§ 123.91 Electronic information for rail cargo required in advance of arrival.

(a) *General requirement.* Pursuant to section 343(a), Trade Act of 2002, as amended (19 U.S.C. 2071 note), and subject to paragraph (e) of this section, for any train requiring a train sheet under § 123.6, that will have commercial cargo aboard, Customs and Border Protection (CBP) must electronically receive from the rail carrier certain information concerning the incoming cargo, as enumerated in paragraph (d) of this section, no later than 2 hours prior to the cargo reaching the first port of arrival in the United States. Specifically, to effect the advance electronic transmission of the required rail cargo information to CBP, the rail carrier must use a CBP-approved electronic data interchange system.

(1) *Through cargo in transit to a foreign country.* Cargo arriving by train for transportation in transit across the United States from one foreign country to another; and cargo arriving by train for transportation through the United States from point to point in the same foreign country are subject to the advance electronic information filing requirement for incoming cargo under paragraph (a) of this section.

(2) *Cargo under bond.* Cargo that is to be unladen from the arriving train and entered, in bond, for exportation, or for transportation and exportation, in another vehicle or conveyance is also subject to the advance electronic information filing requirement under paragraph (a) of this section.