

§ 122.188

(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 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 nei-

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ther 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.

[T.D. 02-40, 67 FR 48986, July 29, 2002; 67 FR 51928, Aug. 9, 2002; 67 FR 54023, Aug. 20, 2002]

§ 122.188 Issuance of temporary Customs access seal.

(a) *Conditions for issuance.* When an approved Customs access seal is required under § 122.182(a) of this part and the port director determines that the application cannot be administratively processed in a reasonable period of time, an employer may, upon written request, be issued a temporary Customs access seal for his employee. The employer must satisfy the port director that a hardship would result if the request is not granted. Surety on the bond, as required by § 122.182(c), may be waived in the discretion of the port director but only for the period of the temporary Customs access seal and its renewal period.

(b) *Validation period.* The temporary Customs access seal shall be valid for a period of 60 days. The port director may renew the temporary Customs access seal for additional 30 day periods where the circumstances under which the temporary Customs access seal was originally issued continue to exist. The temporary Customs access seal shall be destroyed by the port director when the permanent approved Customs access seal is issued, or the privileges granted thereby are withdrawn.

(c) *Temporary employees and official visitors.* The provisions of this section shall also apply to temporary employees and official visitors requiring access to the Customs security area. In the case of temporary employees, the Customs access seal shall be valid for a period of 30 days. In the case of official visitors, the temporary Customs access seal shall be valid for the day of issuance only. Temporary employee and official visitor Customs access seal are renewable for periods equal to their original period of validity.

(d) *Revocation of denial and access.* The temporary Customs access seal may be revoked and access to the Customs security area denied at any time if the holder of the temporary Customs access seal refuses or neglects to obey any proper order of a Customs officer, or any Customs order, rule, or regulation, or if, in the judgment of the port director, continuation of the privileges granted thereby would endanger the revenue or pose a threat to the Customs security area.

[T.D. 90-82, 55 FR 42557, Oct. 22, 1990, as amended by T.D. 02-40, 67 FR 48988, July 29, 2002]

§ 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.

[T.D. 02-40, 67 FR 48988, July 29, 2002]

PART 123—CBP RELATIONS WITH CANADA AND MEXICO

Sec.

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