

§ 720.4

(iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) The appeal must specify the grounds on which the appeal is based and the provisions of the order from which the appeal was taken.

(d) *Appeal procedure.* The Under Secretary, Bureau of Industry and Security, normally will not hold hearings or entertain oral arguments on appeals. A full written statement in support of the appeal must be filed with the appeal and be simultaneously served on all parties, who shall have 30 days from service to file a reply. At his/her discretion, the Under Secretary may accept new submissions, but will not ordinarily accept those submissions filed more than 30 days after the filing of the reply to the appellant's first submission.

(e) *Decisions.* The Under Secretary's decision will be in writing and will be accompanied by an order signed by the Under Secretary, Bureau of Industry and Security, giving effect to the decision. The order may either dispose of the case by affirming, modifying or reversing the order of the ALJ, or may refer the case back to the ALJ for further proceedings. Any order that imposes a denial of export privileges will be published in the FEDERAL REGISTER.

§ 720.4 Effect of denial.

Any person denied export privileges pursuant to this part shall be considered a "person denied export privileges" for purposes of the Export Administration Regulations (EAR) (15 CFR parts 730 through 799). Orders denying export privileges pursuant to Parts 764 and 766 of the EAR are published in the FEDERAL REGISTER when they are issued and are legally controlling documents in accordance with their terms. BIS maintains unofficial compilations of persons denied export privileges on its Web site.

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.

721.1 Inspection of records.

721.2 Recordkeeping.

721.3 Destruction or disposal of records.

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§ 721.1 Inspection of records.

Upon request by BIS or any other agency of competent jurisdiction, you must permit access to and copying of any record relating to compliance with the requirements of the CWCR. This requires that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record.

§ 721.2 Recordkeeping.

(a) *Requirements.* Each person, facility, plant site or trading company required to submit a declaration, report, or advance notification under parts 712 through 715 of the CWCR must retain all supporting materials and documentation used by a unit, plant, facility, plant site or trading company to prepare such declaration, report, or advance notification to determine production processing, consumption, export or import of chemicals. In the event that a declared facility is sold, the previous owner of the facility must retain all such supporting materials and documentation that were not transferred to the current owner of the facility (e.g., as part of the contract involving the sale of the facility)—otherwise, the current owner of the facility is responsible for retaining such supporting materials and documentation. Whenever the previous owner of a declared facility retains such supporting materials and documentation, the owner must inform BIS of any subsequent change in address or other contact information, so that BIS will be able to contact the previous owner of the facility, to arrange for access to such records, if BIS deems them relevant to inspection activities involving the facility (see § 716.4 of the CWCR).

(b) *Five year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for five years from the due date of the applicable declaration, report, or advance notification, or for five years from the date of submission of the applicable

declaration, report or advance notification, whichever is later. Due dates for declarations, reports and advance notifications are provided in parts 712 through 715 of the CWCR.

(c) *Location of records.* If a facility is subject to inspection under part 716 of the CWCR, records retained under this section must be maintained at the facility or must be accessible electronically at the facility for purposes of inspection of the facility by Inspection Teams. If a facility is not subject to inspection under part 716 of the CWCR, records retained under this section may be maintained either at the facility subject to a declaration, report, or advance notification requirement, or at a remote location, but all records must be accessible to any authorized agent, official or employee of the U.S. Government under § 721.1 of the CWCR.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being

recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

§ 721.3 Destruction or disposal of records.

If BIS or other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not be destroyed or disposed of without the written authorization of the requesting entity.

PART 722—INTERPRETATIONS [RESERVED]

NOTE: This part is reserved for interpretations of parts 710 through 721 and also for applicability of decisions by the Organization for the Prohibition of Chemical Weapons (OPCW).