

§ 719.20 Record for decision.

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 719.18 or under 22 CFR 103.8, the decision of the ALJ and such submissions as are provided for under § 719.18 or 22 CFR 103.8 will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents—(1) Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be displayed on the BIS Freedom of Information Act (FOIA) Web site, at <http://www.bis.doc.gov/foia>, which is maintained by the Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce. This office does not maintain a separate inspection facility. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to

any portion of the record under paragraph (b) of this section.

§ 719.21 Payment of final assessment.

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under the CWCR. This suit will include a claim for interest at current prevailing rates from the date payment was due or ordered.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

§ 719.22 Reporting a violation.

If a person learns that a violation of the Convention, the Act, or the CWCR has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-4520, Washington, DC 20230; Tel: (202) 482-1208; Facsimile: (202) 482-0964.

PART 720—DENIAL OF EXPORT PRIVILEGES

Sec.

720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

720.2 Initiation of administrative action denying export privileges.

720.3 Final decision on administrative action denying export privileges.

720.4 Effect of denial.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 720.1 Denial of export privileges for convictions under 18 U.S.C. 229.

Any person in the United States or any U.S. national may be denied export privileges after notice and opportunity

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for hearing if that person has been convicted under Title 18, Section 229 of the United States Code of knowingly:

(a) Developing, producing, otherwise acquiring, transferring directly or indirectly, receiving, stockpiling, retaining, owning, possessing, or using, or threatening to use, a chemical weapon; or

(b) Assisting or inducing, in any way, any person to violate paragraph (a) of this section, or attempting or conspiring to violate paragraph (a) of this section.

§ 720.2 Initiation of administrative action denying export privileges.

(a) *Notice.* BIS will notify any person convicted under Section 229, Title 18, United States Code, of BIS's intent to deny that person's export privileges. The notification letter shall reference the person's conviction, specify the number of years for which BIS intends to deny export privileges, set forth the statutory and regulatory authority for the action, state whether the denial order will be standard or non-standard pursuant to Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 774), and provide that the person may request a hearing before the Administrative Law Judge within 30 days from the date of the notification letter.

(b) *Waiver.* The failure of the notified person to file a request for a hearing within the time provided constitutes a waiver of the person's right to contest the denial of export privileges that BIS intends to impose.

(c) *Order of Assistant Secretary.* If no hearing is requested, the Assistant Secretary for Export Enforcement will order that export privileges be denied as indicated in the notification letter.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

§ 720.3 Final decision on administrative action denying export privileges.

(a) *Hearing.* Any hearing that is granted by the ALJ shall be conducted in accordance with the procedures set forth in § 719.14 of the CWC.

(b) *Initial decision and order.* After considering the entire record in the proceeding, the ALJ will issue an ini-

tial decision and order, based on a preponderance of the evidence. The ALJ may consider factors such as the seriousness of the criminal offense that is the basis for conviction, the nature and duration of the criminal sanctions imposed, and whether the person has undertaken any corrective measures. The ALJ may dismiss the proceeding if the evidence is insufficient to sustain a denial of export privileges, or may issue an order imposing a denial of export privileges for the length of time the ALJ deems appropriate. An order denying export privileges may be standard or non-standard, as provided in Supplement No. 1 to part 764 of the Export Administration Regulations (15 CFR parts 730 through 774). The initial decision and order will be served on each party, and will be published in the FEDERAL REGISTER as the final decision of BIS 30 days after service, unless an appeal is filed in accordance with paragraph (c) of this section.

(c) *Grounds for appeal.* (1) A party may, within 30 days of the ALJ's initial decision and order, petition the Under Secretary, Bureau of Industry and Security, for review of the initial decision and order. A petition for review must be filed with the Office of Under Secretary, Bureau of Industry and Security, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, and shall be served on the Office of Chief Counsel for Industry and Security or on the respondent. Petitions for review may be filed only on one or more of the following grounds:

(i) That a necessary finding of fact is omitted, erroneous or unsupported by substantial evidence of record;

(ii) That a necessary legal conclusion or finding is contrary to law;

(iii) That prejudicial procedural error occurred; or

(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.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

§ 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 774). 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.

[71 FR 24929, Apr. 27, 2006, as amended at 73 FR 78183, Dec. 22, 2008]

PART 721—INSPECTION OF RECORDS AND RECORDKEEPING

Sec.

721.1 Inspection of records.

721.2 Recordkeeping.

721.3 Destruction or disposal of records.

AUTHORITY: 22 U.S.C. 6701 *et seq.*; E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

SOURCE: 71 FR 24929, Apr. 27, 2006, unless otherwise noted.

§ 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. Each facility subject to inspection under Part 716 of the CWCR must retain all supporting materials and documentation associated with the movement into, around, and from the facility of declared chemicals and their feedstock or any product chemicals formed from such chemicals and feedstock. 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