

§ 766.23

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(c) *Final decision.* Within 30 days after receipt of the recommended decision and order, the Under Secretary shall issue a written order affirming, modifying or vacating the recommended decision and order of the administrative law judge. If he/she vacates the recommended decision and order, the Under Secretary may refer the case back to the administrative law judge for further proceedings. Because of the time limits, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing, and any submissions by the parties concerning the recommended decision.

(d) *Delivery.* The final decision and implementing order shall be served on the parties and will be publicly available in accordance with § 766.20 of this part.

[61 FR 12907, Mar. 25, 1996, as amended at 75 FR 33683, June 15, 2010]

§ 766.23 Related persons.

(a) *General.* In order to prevent evasion, certain types of orders under this part may be made applicable not only to the respondent, but also to other persons then or thereafter related to the respondent by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business. Orders that may be made applicable to related persons include those that deny or affect export privileges, including temporary denial orders, and those that exclude a respondent from practice before BIS.

(b) *Procedures.* If BIS has reason to believe that a person is related to the respondent and that an order that is being sought or that has been issued should be made applicable to that person in order to prevent evasion of the order, BIS shall, except in an *ex parte* proceeding under § 766.24(a) of this part, give that person notice in accordance with § 766.5(b) of this part and an opportunity to oppose such action. If the official authorized to issue the order against the respondent finds that the order should be made applicable to that person in order to prevent evasion of the order that official shall issue or amend the order accordingly.

(c) *Appeals.* Any person named by BIS in an order as related to the respondent

may appeal that action. The sole issues to be raised and ruled on in any such appeal are whether the person so named is related to the respondent and whether the order is justified in order to prevent evasion.

(1) A person named as related to the respondent in an order issued pursuant to § 766.25 may file an appeal with the Under Secretary for Industry and Security pursuant to part 756 of the EAR.

(2) A person named as related to the respondent in an order issued pursuant to other provisions of this part may file an appeal with the administrative law judge.

(i) If the order made applicable to the related person is for a violation related to part 760 of the EAR, the related person may file an appeal with the administrative law judge. The related person may appeal the initial decision and order of the administrative law judge to the Under Secretary in accordance with the procedures set forth in § 766.21.

(ii) If the order made applicable to the related person is issued pursuant to § 766.24 of this part to prevent an imminent violation, the recommended decision and order of the administrative law judge shall be reviewed by the Under Secretary in accordance with the procedures set forth in § 766.24(e) of this part.

(iii) If the order made applicable to the related person is for a violation of the EAR not related to part 760 of the EAR and not issued pursuant to § 766.24 of this part, the recommended decision and order of the administrative law judge shall be reviewed by the Under Secretary in accordance with the procedures set forth in § 766.22 of this part.

[61 FR 12907, Mar. 25, 1996, as amended at 71 FR 27605, May 12, 2006]

§ 766.24 Temporary denials.

(a) *General.* The procedures in this section apply to temporary denial orders issued on or after July 12, 1985. For temporary denial orders issued on or before July 11, 1985, the proceedings will be governed by the applicable regulations in effect at the time the temporary denial orders were issued. Without limiting any other action BIS may take under the EAR with respect to any application, order, license or authorization issued under the EAA, BIS

may ask the Assistant Secretary to issue a temporary denial order on an *ex parte* basis to prevent an imminent violation, as defined in this section, of the EAA, the EAR, or any order, license or authorization issued thereunder. The temporary denial order will deny export privileges to any person named in the order as provided for in § 764.3(a)(2) of the EAR.

(b) *Issuance.* (1) The Assistant Secretary may issue an order temporarily denying to a person any or all of the export privileges described in part 764 of the EAR upon a showing by BIS that the order is necessary in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or authorization issued thereunder.

(2) The temporary denial order shall define the imminent violation and state why it was issued without a hearing. Because all denial orders are public, the description of the imminent violation and the reasons for proceeding on an *ex parte* basis set forth therein shall be stated in a manner that is consistent with national security, foreign policy, business confidentiality, and investigative concerns.

(3) A violation may be “imminent” either in time or in degree of likelihood. To establish grounds for the temporary denial order, BIS may show either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations. To indicate the likelihood of future violations, BIS may show that the violation under investigation or charges is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent, and that it is appropriate to give notice to companies in the United States and abroad to cease dealing with the person in U.S.-origin items in order to reduce the likelihood that a person under investigation or charges continues to export or acquire abroad such items, risking subsequent disposition contrary to export control requirements. Lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as

there is sufficient reason to believe the likelihood of a violation.

(4) The temporary denial order will be issued for a period not exceeding 180 days.

(5) Notice of the issuance of a temporary denial order on an *ex parte* basis shall be given in accordance with § 766.5(b) of this part upon issuance.

(c) *Related persons.* A temporary denial order may be made applicable to related persons in accordance with § 766.23 of this part.

(d) *Renewal.* (1) If, no later than 20 days before the expiration date of a temporary denial order, BIS believes that renewal of the denial order is necessary in the public interest to prevent an imminent violation, BIS may file a written request setting forth the basis for its belief, including any additional or changed circumstances, asking that the Assistant Secretary renew the temporary denial order, with modifications, if any are appropriate, for an additional period not exceeding 180 days. BIS’s request shall be delivered to the respondent, or any agent designated for this purpose, in accordance with § 766.5(b) of this part, which will constitute notice of the renewal application.

(2) *Non-resident respondents.* To facilitate timely notice of renewal requests, a respondent not a resident of the United States may designate a local agent for this purpose and provide written notification of such designation to BIS in the manner set forth in § 766.5(b) of this part.

(3) *Hearing.* (i) A respondent may oppose renewal of a temporary denial order by filing with the Assistant Secretary a written submission, supported by appropriate evidence, to be received not later than seven days before the expiration date of such order. For good cause shown, the Assistant Secretary may consider submissions received not later than five days before the expiration date. The Assistant Secretary ordinarily will not allow discovery; however, for good cause shown in respondent’s submission, he/she may allow the parties to take limited discovery, consisting of a request for production of documents. If requested by the respondent in the written submission, the Assistant Secretary shall hold a

hearing on the renewal application. The hearing shall be on the record and ordinarily will consist only of oral argument. The only issue to be considered on BIS's request for renewal is whether the temporary denial order should be continued to prevent an imminent violation as defined herein.

(ii) Any person designated as a related person may not oppose the issuance or renewal of the temporary denial order, but may file an appeal in accordance with § 766.23(c) of this part.

(iii) If no written opposition to BIS's renewal request is received within the specified time, the Assistant Secretary may issue the order renewing the temporary denial order without a hearing.

(4) A temporary denial order may be renewed more than once.

(e) *Appeals*—(1) *Filing*. (i) A respondent may, at any time, file an appeal of the initial or renewed temporary denial order with the administrative law judge.

(ii) The filing of an appeal shall stay neither the effectiveness of the temporary denial order nor any application for renewal, nor will it operate to bar the Assistant Secretary's consideration of any renewal application.

(2) *Grounds*. A respondent may appeal on the grounds that the finding that the order is necessary in the public interest to prevent an imminent violation is unsupported.

(3) *Appeal procedure*. A full written statement in support of the appeal must be filed with the appeal together with appropriate evidence, and be simultaneously served on BIS, which shall have seven days from receipt to file a reply. Service on the administrative law judge shall be addressed to U.S. Coast Guard, ALJ Docketing Center, 40 S. Gay Street, Baltimore, Maryland, 21202–4022. Service on BIS shall be as set forth in § 766.5(b) of this part. The administrative law judge normally will not hold hearings or entertain oral argument on appeals.

(4) *Recommended Decision*. Within 10 working days after an appeal is filed, the administrative law judge shall submit a recommended decision to the Under Secretary, and serve copies on the parties, recommending whether the issuance or the renewal of the tem-

porary denial order should be affirmed, modified or vacated.

(5) *Final decision*. Within five working days after receipt of the recommended decision, the Under Secretary shall issue a written order accepting, rejecting or modifying the recommended decision. Because of the time constraints, the Under Secretary's review will ordinarily be limited to the written record for decision, including the transcript of any hearing. The issuance or renewal of the temporary denial order shall be affirmed only if there is reason to believe that the temporary denial order is required in the public interest to prevent an imminent violation of the EAA, the EAR, or any order, license or other authorization issued under the EAA.

(f) *Delivery*. A copy of any temporary denial order issued or renewed and any final decision on appeal shall be published in the FEDERAL REGISTER and shall be delivered to BIS and to the respondent, or any agent designated for this purpose, and to any related person in the same manner as provided in § 766.5 of this part for filing for papers other than a charging letter.

[61 FR 12907, Mar. 25, 1996, as amended at 71 FR 14099, Mar. 21, 2006; 71 FR 27606, May 12, 2006; 75 FR 33683, June 15, 2010]

§ 766.25 Administrative action denying export privileges.

(a) *General*. The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA, the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure*. Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to