§ 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), 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.
§ 720.3 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 CWCR.

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