

filed with the answer or within seven (7) days after service of the answer. The respondent will also be informed that he or she may, if so desired, be represented by counsel of his or her choosing. Charging letters may be amended from time to time, upon reasonable notice.

(b) *Service.* A charging letter is served upon a respondent:

(1) If the respondent is a resident of the United States, when it is mailed postage prepaid in a wrapper addressed to the respondent at that person's last known address; or when left with the respondent or the agent or employee of the respondent; or when left at the respondent's dwelling with some person of suitable age and discretion then residing herein; or

(2) If the respondent is a non-resident of the United States, when served upon the respondent by any of the foregoing means. If such methods of service are not practicable or appropriate, the charging letter may be tendered for service on the respondent to an official of the government of the country wherein the respondent resides, provided that there is an agreement or understanding between the United States Government and the government of the country wherein the respondent resident permitting this action.

[61 FR 48831, Sept. 17, 1996]

#### §128.4 Default.

(a) *Failure to answer.* If the respondent fails to answer the charging letter, the respondent may be held in default. The case shall then be referred to the Administrative Law Judge for consideration in a manner as the Administrative Law Judge may consider appropriate. Any order issued shall have the same effect as an order issued following the disposition of contested charges.

(b) *Petition to set aside defaults.* Upon showing good cause, any respondent against whom a default order has been issued may apply to set aside the default and vacate the order entered thereon. The petition shall be submitted to duplicate to the Assistant Secretary for Political-Military Affairs, U.S. Department of State, 2201 C Street, NW., Washington, DC 20520. The Director will refer the petition to the

Administrative Law Judge for consideration and a recommendation. The Administrative law Judge will consider the application and may order a hearing and require the respondent to submit further evidence in support of his or her petition. The filing of a petition to set aside a default does not in any manner affect an order entered upon default and such order continues in full force and effect unless a further order is made modifying or terminating it.

[61 FR 48832, Sept. 17, 1996]

#### §128.5 Answer and demand for oral hearing.

(a) *When to answer.* The respondent is required to answer the charging letter within 30 days after service.

(b) *Contents of answer.* An answer must be responsive to the charging letter. It must fully set forth the nature of the respondent's defense or defenses. In the answer, the respondent must admit or deny specifically each separate allegation of the charging letter, unless the respondent is without knowledge, in which case the respondent's answer shall so state and the statement shall operate as denial. Failure to deny or controvert any particular allegation will be deemed an admission thereof. The answer may set forth such additional or new matter as the respondent believes support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in an answer shall be deemed waived. Evidence offered thereon by the respondent at a hearing may be refused except upon good cause being shown. If the respondent does not demand an oral hearing, he or she shall transmit, within seven (7) days after the service of his or her answer, original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue. If any such materials are in language other than English, translations into English shall be submitted at the same time.

(c) *Submission of answer.* The answer, written demand for oral hearing (if any) and supporting evidence required by §128.5(b) shall be in duplicate and mailed or delivered to the Office of Administrative Law Judge, United States

Department of Commerce, Room H-6716, 14th Street and Constitution Avenue, NW., Washington, DC 20230. A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls, SA-6, Room 200, Department of State, Washington, DC 20522-0602, or delivered to the 21st street entrance of the Department of State, 2201 C Street, NW., Washington, DC addressed to Director, Office of Defense Trade Controls, SA-6, Room 200, Department of State, Washington, DC 20522-0602.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48832, Sept. 17, 1996]

#### § 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Administrative Law Judge, may request from the Office of Defense Trade Controls any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may provide any relevant information, not privileged, that may be necessary or helpful in preparing a defense. The Office of Defense Trade Controls may supply summaries in place or original documents and may withhold information from discovery if the interests of national security or foreign policy so require, or if necessary to comply with any statute, executive order or regulation requiring that the information may not be disclosed. The respondent may request the Administrative Law Judge to request any relevant information, books, records, or other evidence, from any other person or government agency so long as the request is reasonable in scope and not unduly burdensome.

(b) *Discovery by the Office of Defense Trade Controls.* The Office of Defense Trade Controls or the Administrative Law Judge may request from the respondent admissions of facts, answers to interrogatories, the production of books, records, or other relevant evidence, so long as the request is relevant and material, reasonable in scope, and not unduly burdensome.

(c) *Subpoenas.* At the request of any party, the Administrative Law Judge may issue subpoenas, returnable before him, requiring the attendance of witnesses and the production of books, records, and other documentary or

physical evidence determined by the Administrative Law Judge to be relevant and material to the proceedings, reasonable in scope, and not unduly burdensome.

(d) *Enforcement of discovery rights.* If the Office of Defense Trade Controls fails to provide the respondent with information in its possession which is not otherwise available and which is necessary to the respondent's defense, the Administrative Law Judge may dismiss the charges on her or his own motion or on a motion of the respondent. If the respondent fails to respond with reasonable diligence to the requests for discovery by the Office of Defense Trade Controls or the Administrative Law Judge, on her or his own motion or motion of the Office of Defense Trade Controls, and upon such notice to the respondent as the Administrative Law Judge may direct, may strike respondent's answer and declare the respondent in default, or make any other ruling which the Administrative Law Judge deems necessary and just under the circumstances. If a third party fails to respond to the request for information, the Administrative Law Judge shall consider whether the evidence sought is necessary to a fair hearing, and if it is so necessary that a fair hearing may not be held without it, the Administrative Law Judge shall dismiss the charges.

[61 FR 48832, Sept. 17, 1996]

#### § 128.7 Prehearing conference.

(a)(1) The Administrative Law Judge may, upon his own motion or upon motion of any party, request the parties or their counsel to a prehearing conference to consider:

- (i) Simplification of issues;
- (ii) The necessity of desirability of amendments to pleadings;
- (iii) Obtaining stipulations of fact and of documents to avoid unnecessary proof; or
- (iv) Such other matter as may expedite the disposition of the proceeding.

(2) The Administrative Law Judge will prepare a summary of the action agreed upon or taken at the conference, and will incorporate therein any written stipulations or agreements made by the parties.