

## Department of State

## § 128.6

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 resides permitting this action.

[61 FR 48831, Sept. 17, 1996, as amended at 71 FR 20551, Apr. 21, 2006]

### § 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 designated Administrative Law Judge. A copy shall be simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20522-0112, or delivered to 2401 Street, NW., Washington, DC addressed to Managing Director, Directorate of Defense Trade Controls, SA-1, Room 1200, Department of State, Washington, DC 20037.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48832, Sept. 17, 1996; 71 FR 20551, Apr. 21, 2006]

### § 128.6 Discovery.

(a) *Discovery by the respondent.* The respondent, through the Administrative Law Judge, may request from the Directorate of Defense Trade Controls any relevant information, not privileged or otherwise not authorized for