

(vii) The name and address of the person(s) making the disclosure and a point of contact, if different, should further information be needed.

(3) Factors to be considered include, for example, whether the violation(s) were intentional or inadvertent; the degree to which the person or firm responsible for the violation(s) making the disclosure was familiar with the laws and regulations; and whether the violator was the subject of prior administrative or criminal action under the AECA. In addition to immediately providing written notification, persons, firms, companies and organizations are strongly urged to conduct a thorough review of all export-related transactions where possible violation(s) are suspected.

(d) *Documentation.* (1) The written disclosure should be accompanied by copies of those documents that substantiate it. Where appropriate, the documentation should include, but is not limited to:

(i) Licensing documents (e.g., license applications, export licenses and end-user statements);

(ii) Shipping documents (e.g., shipper's export declarations, airway bills and bills of lading);

(iii) Any other relevant documents must be retained by the person making the disclosure until the Office of Defense Trade Controls requests them or until a final decision on the disclosed information has been made.

(e) *Certification.* A certification must be submitted stating that all of the representations made in connection with the voluntary self-disclosure are true and correct to the best of that person's knowledge and belief. Certifications made by a firm, corporation or any other organization should be executed by someone with the authority to do so.

(f) *Oral presentations.* It is generally not necessary to augment the written presentation with an oral presentation. However, if the person making the disclosure believes a meeting is desirable, a request for one should be included with the written presentation.

(g) Voluntary disclosures should be sent to:

Compliance Analysis Division, PM/DTC, SA-6, room 200, Office of Defense Trade

Controls, Bureau of Politico-Military Affairs, U.S. Department of State, Washington, DC 20522-0602.

PART 128—ADMINISTRATIVE PROCEDURES

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AUTHORITY: Secs. 2, 38, 40, 42, and 71, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658; E.O. 12291, 46 FR 1981.

SOURCE: 58 FR 39320, July 22, 1993, unless otherwise noted.

§ 128.1 Exclusion of functions from the Administrative Procedure Act.

The Arms Export Control Act authorizes the President to control the import and export of defense articles and services in furtherance of world peace and the security and foreign policy of the United States. It authorizes the Secretary of State to make decisions on whether license applications or other written requests for approval shall be granted, or whether exemptions may be used. It also authorizes the Secretary of State to revoke, suspend or amend licenses or other written approvals whenever the Secretary deems such action to be advisable. The administration of the Arms Export Control Act is a foreign affairs function encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act and is thereby expressly exempt from various provisions of that

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Act. Because the exercising of the foreign affairs function, including the decisions required to implement the Arms Export Control Act, is highly discretionary, it is excluded from review under the Administrative Procedure Act.

[61 FR 48831, Sept. 17, 1996]

§ 128.2 Administrative Law Judge.

The Administrative Law Judge referred to in this part is an Administrative Law Judge appointed by the Department of State or of the Department of Commerce, as provided in 15 CFR 788.2. The Administrative Law Judge is authorized to exercise the powers and perform the duties provided for in §§127.7, 127.8, and 128.3 through 128.16 of this subchapter.

[61 FR 48831, Sept. 17, 1996]

§ 128.3 Institution of Administrative Proceedings.

(a) *Charging letters.* The Director, Office of Defense Trade Controls, with the concurrence of the Office of the Legal Adviser, Department of State, may initiate proceedings to impose debarment or civil penalties in accordance with §127.7 or §127.10 of this subchapter respectively. Administrative proceedings shall be initiated by means of a charging letter. The charging letter will state the essential facts constituting the alleged violation and refer to the regulatory or other provisions involved. It will give notice to the respondent to answer the charges within 30 days, as provided in §128.5(a), and indicate that a failure to answer will be taken as an admission of the truth of the charges. It will inform the respondent that he or she is entitled to an oral hearing if a written demand for one is 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