United States Department of State

Bureau of Political-Military Affairs
Office of Defense Trade Controls

Washington, D.C. 20037

December 26, 2002

Larry D. Hunter
General Counsel
Hughes Electronics Corporation
200 North Sepulveda Boulevard
El Segundo, California 90245-0956

Douglas G. Bain
Senior Vice President & General Counsel
The Boeing Company
100 North Riverside
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Re: Investigation of Hughes Electronics Corporation and Boeing Satellite Systems (formerly Hughes Space and Communications) Concerning the Long March 2E and Long March 3B failure investigations, and other satellite-related matters involving the People's Republic of China

Dear Messrs. Hunter and Bain:

(1) The Department of State ("Department") charges that HUGHES ELECTRONICS CORPORATION (hereinafter "Respondent HE", which includes Hughes Network Systems, Inc.) and BOEING SATELLITE SYSTEMS (hereinafter "Respondent BSS" formerly HUGHES SPACE AND COMMUNICATIONS ("HSC"[1]) (hereinafter, "Respondents" when referred to jointly) violated the Arms Export Control Act ("Act") and the International Traffic in Arms Regulations ("ITAR" or "Regulations") in connection with their misconduct related to the January 1995 failed launch of the Long March 2E rocket carrying the APSTAR II spacecraft, the February 1996 failed launch of the Long March 3B rocket carrying the INTELSAT 708 spacecraft, and

[1] The Boeing Company purchased Hughes Space and Communications from Hughes Electronics on January 13, 2000.

other matters set forth herein concerning their business activities with China. One hundred twenty-three (123) violations are alleged at this time. The essential facts constituting the alleged violations and the regulatory or other provisions involved are described herein. The Department reserves the right to amend this charging letter (See 22 C.F.R. § 128.3(a)), including through a revision to incorporate additional charges stemming from the same misconduct of the Respondents in these matters. Please be advised that this is a charging letter to impose debarment or civil penalties pursuant to 22 C.F.R. § 128.3.

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PART I - RELEVANT FACTS

Jurisdictional Requirements

(2) Respondents HE and BSS are corporations organized under the laws of the State of Delaware.

(3) Respondents are -- and were during the period covered by the offenses set forth herein -- engaged in the manufacture and export of defense articles and defense services and so registered with the Department of State, Office of Defense Trade Controls ("ODTC") in accordance with Section 38 of the Act and § 122.1 of the Regulations.

(4) Respondents are U.S. persons within the meaning of § 120.15 and, as such, are subject to the jurisdiction of the United States, in particular with regard to the Act and the Regulations.

(5) China Academy of Launch Technology ("CALT"), China Great Wall Industry Corporation ("CGWIC"), China Satellite Launch and Tracking Control ("CLTV"), China Aerospace Corporation ("CASC"), China International Trust & Investment Company ("CITIC"), China United Telecommunications Satellite Company, China Overseas Space Development & Investment Company, Commission for Science, Technology & Industry for National Defense ("COSTIND"), Sino-Canada Telecommunications and Investment Management Company, Ltd., Asia Pacific Satellite Telecommunications Company ("APT" formerly "APSAT"), Asia Pacific Mobile Telecommunications Company ("APMT"), Asian Satellite Telecommunications Company, Ltd ("ASIASAT"), Societe Europeene des Satellites ("SES") and

other persons so identified below all are foreign persons within the meaning of § 120.16 of the Regulations.

US-PRC International Agreements on Space Launch

(6) On December 17, 1988, the United States and the People's Republic of China ("PRC") signed an international agreement in Washington, D.C. entitled "Memorandum of Agreement on Satellite Technology Safeguards Between the Governments of the United States and the People's Republic of China," which entered into force upon signature. This agreement specifies the security procedures to be followed for launch of U.S.-manufactured satellites from the territory of the PRC and also expressly prohibits U.S. persons from providing "any assistance" to the PRC relating to the design, development, operation, maintenance, modification, or repair of the launch facility or launch vehicle.[2]

OPTUS B2

(7) On December 21, 1992, a PRC Long March 2E space launch vehicle ("SLV") carrying the OPTUS B2 satellite manufactured by Respondents exploded shortly after liftoff from China's space launch facility (Xichang Launch Center). The satellite was exported to the PRC for launch pursuant to a State Department munitions license issued by ODTC, which provided for U.S. Government (i.e., through Department of Defense personnel) monitoring of all phases of the launch

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[2] The 1988 Agreement was superceded upon entry into force by a similar U.S.-PRC agreement done at Beijing on February 11, 1993, containing the same prohibition. The agreement also bars the PRC from seeking such assistance and, together with the prohibition on the provision by U.S. persons of such assistance, provides the fundamental conditions *sine qua non* the United States has licensed the export of commercial satellites to the PRC for launch into outer space. The requirement to comply with these bilateral agreements has been routinely incorporated as a condition of the export license authorizations provided by ODTC to U.S. satellite manufacturers. See para. (7) above. In a letter dated December 3, 2002, Respondents stated their view that the agreement (rather than reflecting a ban on the provision of assistance by U.S. persons) is more accurately described as reflecting a mutual understanding of the PRC and the USG.

and which required that all of Respondents' employees and agents conform strictly to the aforesaid Satellite Technology Safeguards Agreement, specifically by prohibiting "any .. technical assistance whatsoever to its (Respondents') Chinese counterparts which might assist China to design, develop or enhance the performance of any of its contemplated or existing Long March launch vehicles or missiles."

(8) Following the OPTUS B2 failed launch, the Respondents concluded that the PRC's SLV nose cone (or fairing) was a principal cause of the failure and sought advice from ODTC on whether a license would be granted to hold discussions with the PRC on this matter, following which consultation with ODTC the Respondents concluded that "a license request would almost certainly be denied (by ODTC) if even the slightest possibility or inference, real or perceived, remained undispelled (sic) that the technical data could directly or indirectly impact PRC ballistic missile interests."[3] In the event, the Respondents decided not to seek a license from ODTC, but did proceed to conduct a launch failure investigation into the causes of the OPTUS B2 SLV failure, which would inform their approach in subsequent matters, described below.[4]

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[3] April 9, 1993, memorandum from Majors (Hughes Washington Director for International Affairs) to Leedle (Hughes Technology Export Control Coordinator).

[4] While there is information available to ODTC indicating that violations of the Act and the Regulations occurred in the OPTUS B2 matter, it has decided not to bring charges owing to the passage of time and contradictory recollections of persons involved in these matters, and the further opinion that the charges detailed herein provide an adequate basis for addressing the underlying patterns of misconduct. The Respondents do not deny their failure to obtain a license, but maintain they obtained approval from a Department of Defense monitor prior to making disclosures to the Chinese. Respondents also assert that the Department "well knows" that their decision not to seek a license "coincided with a decision not to furnish any information that could qualify as technical data or a defense service." However, the Department has no such understanding or knowledge; quite the opposite is true: The Respondents have repeatedly asserted throughout this investigation that none of their conduct in any of the matters touched on in this

APSTAR II

(9) On January 26, 1995, a PRC Long March 2E space launch vehicle ("SLV") carrying the APSTAR II satellite exploded shortly after liftoff from China's space launch facility. The APSTAR II satellite was also manufactured by the Respondents pursuant to a contract with the Asia-Pacific Satellite Telecommunications company ("APT") located in Hong Kong, which was then and remains today "owned or controlled" (as these terms are understood in the Regulations at § 122) by various PRC entities. The APSTAR II satellite had been exported to the PRC launch pursuant to an export license issued by the Department of Commerce. That export license, while not requiring U.S. Government monitoring of the launch or other specific prohibitions on assistance to China's SLV program (unlike the earlier State Department licenses for OPTUS B2 and the first APSTAR satellite), also did not -- indeed, lawfully could not -- provide authorization for Respondents to engage in the unlawful conduct alleged below in violation of the Act and the Regulations.[5]

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charging letter qualifies as a "defense service" either because it excluded technical data (in their opinion) or because it is Constitutionally protected "speech", while ODTC has repeatedly admonished Respondents and their attorneys that the AECA and ITAR properly regulate on U.S. security and foreign policy grounds the conduct of U.S. persons who aid and abet the space launch and/or intercontinental ballistic missile programs of foreign powers, that Respondents are improperly conflating the laws and regulations governing the conduct of their corporations abroad in respect to foreign space and missile programs with the laws and regulations governing the exercise of "speech" (which are in no manner at issue here) and that, because of security and foreign policy considerations, the United States has long held by the ITAR (with which regulations Respondents are fully familiar) that a defense service requiring approval by ODTC of a technical assistance agreement may occur even when all the information relied on in furnishing the defense service to a foreign power is in the public domain.

[5] Hughes initially received approval from the State Department in March 1993 for the APSAT (later termed APSTAR) program, which was then defined to cover two series 376

(10) Following the APSTAR II launch failure, the Respondents, APT, CGWIC and the insurance firm, Johnson & Higgins, signed a memorandum of understanding in which they agreed "to cooperate with each other in a spirit of mutual benefit and cooperation to prepare information concerning the APSTAR-2 mission failure...Each of the parties will use their best efforts to prepare the necessary information as soon as possible to assist APT's business operations... APT, Hughes and CGWIC agree that they will each cooperate and coordinate all investigations of the probable cause of

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satellites for APT, Ltd. in Hong Kong. However, in August 1993 the State Department imposed missile sanctions (Category 2) and determined that the export of communications satellites containing Missile Technology Control Regime ("MTCR") Category 2 items to the sanctioned Chinese entities was prohibited and suspended access to any MTCR related technology by PRC nationals. In January 1994 the State Department terminated the suspension with respect to all PRC nationals, but continued to prohibit access to any MTCR related technology by any PRC national affiliated with the Chinese Ministry of Aerospace Industry or any Chinese government activity relating to missile development or production, electronics, space systems or equipment, and military aircraft. Ten such Chinese activities were enumerated as examples to Hughes, including CGWIC, CASC, et alia. Faced with these developments in USG policy, Hughes had in the interim redefined the second APSTAR satellite based on its 601 series and, in the interim (November 1993), sought and received approval for the export of this satellite from the Department of Commerce. The Respondents have maintained (most recently in a letter dated December 3, 2002, that no violation occurred in this matter because the Department of Commerce was "well within its authority" to approve release of the launch failure material that was given to the Chinese in the APSTAR II failure investigation through a commodity classification (CCATS #G000824, dated August 26, 1995). However, the record indicates Respondents knew that the Apstar II launch failure investigation was properly within the coverage of the ITAR and, hence, required Department of State approval; in any case, the Department of Commerce has said it erred in that matter.

failure of the APSTAR-2 mission in a spirit of mutual benefit."[6]

(11) By letter dated January 31, 1995, Respondents informed PRC authorities that "Hughes is prepared to fully cooperate with you in investigating this failure so that we may quickly resume launches of the Long March. I have instructed our people to make available whatever data and resources are required to understand the cause and fix the problem. Again, I want to make clear that I strongly support our mutual cooperation, including meaningful technology transfer, and I am prepared to bring the full capability of Hughes to the partnership."[7]

(12) Notwithstanding the established prohibitions and restrictions contained in the US-PRC bilateral agreement, which formed an essential basis for the launch of all U.S.-manufactured satellites from the PRC, and notwithstanding Respondents' careful understanding of these prohibitions and restrictions (from prior discussions with and licenses approved by ODTC), Respondents took numerous actions, some of which are described herein, in violation of the Act and the Regulations. Notably, Respondents decided to form and direct a launch failure investigation beginning in January 1995 and continuing throughout much of that year. The investigation involved the formation of several groups of leading technical experts from China and the U.S., which throughout the investigation engaged in an extensive exchange of technical data and analysis, producing a wide range of unauthorized technology transfers and the violations enumerated in PART II, below.[8] Additionally, both

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[6] Memorandum of Understanding Concerning the Mission Failure, dated January 26, 1995, between He Kerang, APT Satellite co., Ltd., Yu Fusheng, China Great Wall Industry Corp., Donald Cromer, Hughes Space and Communications and Paul B. O'Connor, Johnson & Higgins Insurance Company.

[7] Letter dated January 31, 1995, from Steven Dorfman, Senior Vice President, GM Hughes Electronics to Minister Liu Jiyuan, China Aerospace Corporation.

[8] An HSC facsimile message dated May 14, 1995, describes the scope of technical interchange with APT officials: "(W) e of course briefed APT about everything, including the fairing concerns. APT had been present in all of the failure meetings to date, and has copies of everything from both sides."

parties contracted an independent investigation team of private consultants and aerospace industry experts.[9]

(13) At no time did the Respondents seek or receive a license or other written approval concerning the conduct of their APSTAR II failure investigation with PRC authorities or the experts who participated in that investigation as required by Section 38 of the Act and relevant provisions of the Regulations. Such approval would not, of course, have been forthcoming in view of the established legally binding prohibition in the 1993 (and predecessor) US-PRC agreement and as reflected in the prohibitions and limitations contained in prior export authorizations related to China that ODTC had furnished to Respondents. This said, Respondents HE and BSS have continued to maintain that the reason no written approval was sought was because none was required.[10]

(14) Instead, a March 21, 1995, internal memorandum of Respondents summarized the corporate strategy for the APSTAR II failure investigation:

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[9] Indeed, the scale and depth of technical assistance furnished to Chinese authorities in this matter is indicated by the organizational structure of the failure investigation: a Failure Investigation Team was formed to examine all aspects of the failure, including the satellite and rocket and "external interfaces" with CALT, CGWIC, et al., and produced a 38 page report based on the work of seven specialized sub-teams (spacecraft debris, material properties, video analysis, telemetry, coupled loads, structures and aerodynamics) drawing on the experiences of members who also worked on the Optus failure; a Spacecraft Focus Team reviewed the work of the Failure Investigation Team and produced an 84-page report assessing whether and how the satellite might have been a contributing factor in the failure; an Independent Review Team provided Respondents with an independent assessment of the work of the other teams; an International Oversight Team reviewed the work of both sides and included representatives of China and Respondents, as well as third party foreign nationals. The IOT met on three separate occasions between April and June.

[10] December 3, 2002, Letter to ODTC Director Lowell from HEC/BSS Counsel Randall Turk, Esq. (Baker Botts).

"…(I)n the B2 (OPTUS B2) investigation, communication between companies was limited due to Government Monitor oversight from DOS (Department of State) and fear by the Chinese that Hughes was trying to prove that the fairing was at fault….(K)eep communication open with the Chinese long enough to get the information needed to understand the fairing and the rocket. Without Government monitor (now under the Department of Commerce license) and without the appearance of pointing our finger, the Chinese have been much more open to giving data we need."[11]

(15) This strategy was further influenced by Respondents' business interests in securing future contracts with the PRC and with Asian satellite companies in which PRC influence figured prominently, and concern that U.S. Government policy constraints on technology transfer as administered by ODTC were an impediment to achieving those interests. A May 2, 1995, internal memorandum of Respondents regarding a meeting with APT, summarizes this assessment:

"APSTAR 2 and APMT decisions (discussed further below) will be within a global context (technology transfer, launch vehicle commitments, long term manufacturing partnership with China). Key to that global context is technology transfer. This made it extremely clear that it is time for Hughes to either 'put up or shut up' in regard to meeting their (sic) previously stated commitment of transferring technology to China. If we want to win APT (APMT) Hughes must make real commitment to transferring technology to China."[12]

INTELSAT 708 and APSTAR 1A

(16) On June 23, 1995, the Department of Commerce approved an export license for Respondents to export the APSTAR 1A satellite to China for launch on the Long March 3B SLV and sale to APT. The Commerce license specifically

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[11] Hughes Space and Communications Company document dated March 21, 1995, Strategy for APSTAR Failure Investigation.

[12] Hughes Space and Communications facsimile message dated May 2, 1995, from Steven Dorfman to John Konrad et al., subject: Status and Recommendations May 2 Meeting with APT.

provided, in part, that "technical data or assistance related to the design, development, operation, maintenance, modification, or repair of the Chinese launch vehicle is not authorized under this license.'[13]

(17) On February 15, 1996, the PRC's Long March 3B SLV crashed during a failed attempt to launch the INTELSAT 708 satellite manufactured by Space Systems/Loral ("SS/L").

(18) On February 22, 1996, Respondents' Chairman of the Board wrote to Chinese General Shen Rongjun (then Deputy Director of the Commission for Science, Technology, and Industry for National Defense "COSTIND") and asked "if there is anything we at Hughes Space and Communications can do to support your investigation into the cause of the loss (i.e., LM 3B and INTELSAT 708)." [14] The next day, February 23, 1996, Respondents' Chairman wrote to Major General Hu Shixiang, Director of the Xichang Satellite Launch Center, to assure him of his "personal support and that of my company as you investigate the causes for the loss."

(19) On March 9, 1996, Respondents' personnel met with Xichang launch center authorities, toured the crash site, conducted a site survey, and developed a list of twenty-five items that required resolution before the launch of APSTAR 1A could take place later that year, which launch was slated to rely on the LM 3 SLV.[15]

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[13] Department of Commerce export license no. D-219965.

[14] Respondents maintain that the CEO Cromer letters were merely an expression of condolence for the deaths of Chinese citizens. It is true that the letter to Major General Hu Shixiang (but not the letter to General Shen Rongjun) did offer condolences for the loss of life in its introductory paragraph as follows: "Please allow me to express my sincere condolences for the loss of the Long March 3B carrying Intelsat 708. I was particularly saddened to learn there may have been a number of lives lost, including some of your own personnel. I was gratified to hear, however that damage to your facilities was relatively light and I know you will soon be fully operational once again."

[15] Respondents suggest their motive for this activity, which concerned chiefly repairs of the facility, was to ensure the safety of their own personnel and have continued to assert that "the site survey was perfectly lawful" (December 3 letter from Turk to Lowell). However, this assertion also

(20) On March 10, 1996, Respondents' personnel presented CALT, CGWIC, and APT with the results of its survey.

(21) On March 14, 1996, Respondents' personnel met in Beijing with APT, CLTC, CALT, CGWIC and representatives of the international insurance industry in which Respondents and Chinese authorities were informed that: (a) a final report on the root causes of the INTELSAT 708 launch failure would be required, as well as (b) a review of the report by an independent oversight team. These requirements were fully consistent with the groundwork already laid by Respondents who had already informed Chinese authorities on March 10, 1996, that more information would be needed to convince the insurance underwriters that an adequate investigation had been conducted to isolate the cause of the LM-3B failure and that a detailed presentation would be needed to convince the underwriters that the LM-3 launch vehicle (slated to launch Respondents' APSTAR 1A satellite) was substantially different from the LM-3B and thus did not run the risk of experiencing the same failure.

(22) Chinese authorities initially invited Respondents to head up the oversight team for INTELSAT 708 (as it had done for OPTUS B2 and APSTAR II), but in the event, Respondents declined and opted to participate in an SS/L led investigation.[16]

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ignores the fact that the prohibition on assistance to the PRC launch program extends explicitly to the PRC launch "facility" (See para. 6, above), as long stated in the US-PRC bilateral agreement.

[16] Apparently in order "not to rock the boat" while an export license application for yet another satellite export involving China (i.e., APMT) was undergoing review in the USG (April 8, 1996, memorandum from Herron to Cromer) and in light of Respondents' assumption that SS/L's chairmanship would act as a "buffer" for it (e.g., an April 9, 1996 response to Herron from Steinhauer opines that "it is in HSC advantage to stay engaged. An outside consultant may buffer HSC somewhat relative to the technology transfer issue." Also, a May 6, 1996, message to SS/L from Steinhauer referring to "detailed suggestions for specific testing in the controls laboratory, for specific fixes to the IMU (inertial measurement unit) single point wire solder joint

(23) Notwithstanding the Respondents' decision to opt for a lower profile in the 1996 SS/L-led failure investigation by the Independent Review Committee,[17] they nevertheless participated fully in the 1996 launch failure investigation both through the assignment of two top technical personnel, often playing a leadership role both within the IRC in troubleshooting problems, and independent of the IRC, through separate, technical meetings with Chinese authorities. For example:

(a) On April 10, 1996, Respondents personnel faxed nine questions pertaining to the LM 3B failure to GW Aerospace Corporation, a U.S.-based consulting company owned by CGWIC, which were to be forwarded to the LM 3B program office in Beijing "in order to ensure that the anticipated Chinese failure report considered specific concerns related to the LM 3B failure … and impact the cause may have on Hughes decision to launch the APSTAR 1A satellite."[18]

(b) On April 25, 1996, Respondents personnel met with GW Aerospace personnel to discuss questions drafted in preparation for the second IRC meeting, in which Respondents' personnel subsequently reported that they had "thoroughly discussed the possibility of any other control and guidance system failure causes, specifically including the eight-engine performance and structural issues. We discussed the eight-engine (LM 3B) versus four-engine (LM

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failure" notes that "the committee could be approaching the border of technology transfer, i.e., how to improve the launch vehicle" and asks "will SS/L be the filter for tech transfer issues?" (Respondents maintain that, despite appearances to the contrary, there is no connection between any of the preceding discussions and "the decision for Loral to take the lead with respect to oversight of the investigation.")

[17] Charges associated with SS/L's conduct related to the IRC were resolved through a Consent Agreement entered into between SS/L, Loral Space & Communications and the Department in January 2002.

[18] Hughes Space and Communications facsimile transmission dated April 10, 1996, from R. Steinhauer, Hughes Chief Scientist, to Tian Guodang, GW Aerospace Corporation, Subject: Questions for the APSTAR 1A Insurance Meeting.

3A) lift off vibration and acoustic environment at the IMU. CALT will have to investigate this further."[19]

(c) On April 30 and May 1, 1996, Respondents in a "splinter group" of IRC experts concerned with attitude control advised the Chinese of tests that could be done using equipment available at CALT's factory in order to replicate the launch failure and confirm the Chinese theory of the IMU in the LM-3B failure scenario, as well as differences between the LM 3B and LM 3 IMUs.[20]

APMT and Sino-Canada

(24) On May 8, 1998, Respondents announced that they had concluded a contract with Asia Pacific Mobile Telecommunications Satellite (APMT), a company sponsored by Chinese and Singapore partners, for a satellite based mobile phone system. The turnkey system was to include two satellites to be launched from China on the Long March 3B SLV, five gateways, one network operations center, one satellite operations center and an initial purchase of 70,000 user terminals, with the ground network equipment and handsets to be provided by HUGHES NETWORK SYSTEMS.[21]

(25) APMT's Chinese shareholders and partners included China Satellite Launch and Tracking Control General, China United Telecommunications Satellite Company, China Overseas Space Development & Investment Company.

(26) In June 1995 Sino-Canada Telecommunications and Investment Management Company, Ltd. was incorporated in Macao, having its principal place of business at the Hotel Fortuna, in order to explore telecommunications

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[19] Email message from R. Steinhauer to John Smay et al. dated April 26, 1996, subject: Discussions with Huang Zuoyi.

[20] Letter from Wah Lim, Senior VP, SS/L, to Liu Zhixiong, VP CGWIC regarding Second IRC Meeting in Beijing.

[21] The U.S. Government ultimately rejected the export license application for this project when by letter dated February 24, 1999, the Department of Commerce informed Hughes of its intention to deny several license applications for APMT in light of concerns expressed by the Department of State regarding the planned launch services.

opportunities in the PRC related to APMT.[22] Sino-Canada's managing director, Suen Yan Kwong, was the founder of Chung Kiu Telecommunications (CKT), which had invested in cellular telecommunications for use under special network by China's People's Liberation Army (PLA) in military districts along the coastal provinces.

(27) On January 21, 1999, in the course of a meeting with ODTC in Washington, D.C., Respondents' Vice President and General Counsel advised that Respondents had become concerned about a $5 million foreign sales agreement with Sino-Canada related to APMT entered into by Respondents (which had not been reported to ODTC at the time of Respondents' technical assistance agreement submission for APMT on June 1, 1998 as required by § 124.12(a)(6)), and that Respondents had retained Kroll Associates to examine this matter ($500,000 had already been paid to Sino-Canada and an additional $2.5 million was held in escrow). ODTC requested a statement as to whether any of the payments concerned, in particular, political contributions, which Respondents subsequently reported negatively, and whether the Kroll report would be made available to ODTC, which Respondents have declined to furnish on the grounds of attorney-client privilege.[23]

APMT and Shen Jun

(28) On July 9, 1996, Respondents submitted a munitions export license application to ODTC seeking authorization for one of its employees, Shen Jun, described as a dual Canadian Chinese national, in order to provide Chinese-English language translation and interpretation support for the

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[22] Respondents advise that opportunities related to APMT was not the sole business activity of, or the sole purpose for, Sino-Canada's incorporation.

[23] Respondents now maintain that their prior General Counsel erred in that meeting and that, while there were preliminary discussions with Kroll about conducting a background investigation of Sino-Canada, Respondents ultimately elected to have the background investigation conducted by outside counsel other than Kroll (which investigative report has similarly been withheld from ODTC by Respondents).

preliminary design phase of the APMT satellite project.[24] In no place in that submission nor otherwise did HUGHES SPACE AND COMMUNICATIONS COMPANY inform ODTC that this individual was, in fact, the son of PLA General and COSTIND Deputy Director Shen Rongjun[25], which fact was material to the U.S. Government's consideration of whether the license application should be approved or denied.[26]

(29) The record indicates that Shen Jun's role for Respondents went well beyond that of an interpreter/translator and more closely resembled that of an intermediary with his father, General Shen, and other PRC space authorities, in order to cultivate their support in various matters of interest to Hughes, including the handling of the APSTAR II launch failure investigation and the APMT contract.[27]

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[24] This license application was initially approved, but subsequently suspended by ODTC when it became known that Shen Jun was the son of Shen Rongjun.

[25] According to a September 20, 1995 memorandum, Hughes regarded General Shen Rongjun as "the most important Chinese space official."

[26] Respondents have maintained as of December 3, 2002, that this information was not material and that its omission was proper because there is no place in the munitions license application for them to disclose father-son relationships between General officers of the People's Liberation Army who are overseeing a project they are working on and their foreign national employees working in U.S. facilities on the same project.

[27] An August 8, 1995, memorandum from Bruce Elbert reports on APMT related activities by Shen Jun: "in a telephone conversation last night with Jun he provided the following information after having talked to important people involved with APMT …. Lockheed Martin has sweetened their bid with technology transfers on launch vehicles and changed their price… These points were reiterated by the highest official he interfaced with……Jun has the worry that if it goes wrong in Munich (an apparent reference to an APSTAR II launch failure briefing to insurance providers) we open the door for Lockheed Martin and their unique proposal for technology transfer on the launch vehicle. This could result in our not getting into the final round of APMT negotiations." The memo goes on to report that Shen Jun has been asked "to make a proposal to CASC and CGWIC that they describe their

ASIASAT 3

(30) By letter dated November 12, 1999, Respondent BSS provided a preliminary notification to ODTC of an intended voluntary disclosure of violations of the Regulations related to its ASIASAT 3 program, a satellite manufactured for the Asia Satellite Telecommunications Company in Hong Kong, whose principal owners are China International Trust & Investment Company (CITIC) and Societe Europeenne des Satellites (SES, a company incorporated in Luxembourg).[28] By letter dated February 9, 2000, Respondents advised ODTC that its internal audit (now complete) had concluded its employees had provided ASIASAT personnel with technical data that exceeded the scope of its Department of Commerce license (and which was subject to State Department jurisdiction).

(31) The unauthorized disclosures concerned two categories of information. First, unit-level FECMA (failure modes and criticality analysis) and worst case circuit analysis for the ASIASAT 3 satellite, which constitutes detailed design information subject to control under the Regulations and generally not releasable to foreign persons, had been made available to the ASIASAT organization in 1996 in five volumes of technical data. ODTC directed Respondent BSS to seek the return of this data from ASIASAT following the submission of the voluntary disclosure in February 2000, but Respondent was unable to effect the return of all the information from ASIASAT. Second, following abandonment of an ASIASAT field office at Respondents El Segundo, California premises, Respondent Boeing discovered additional technical data that had been (presumptively) accessible to a PRC national employee of ASIASAT assigned to the El Segundo field office. This technical data concerned production information for certain subsystems, including the Xenon Ion propulsion system, which information is also generally not releasable to foreign persons.

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redesign of the LM-2E fairing and that Hughes discuss what it will do only if we use the LM-2E again."

[28] ASIASAT 3 was launched on December 25, 1997, from the Baikonur Cosmodrone in Kazakhstan, but did not reach its proper orbit when the upper stage of the Proton rocket failed.

ASTRA 1G/1H

(32) By letter dated September 17, 2001, Respondent Boeing voluntarily disclosed to ODTC that its personnel improperly transferred controlled technical data to SES during a 1995 critical design review for the ASTRA 1G satellite and a 1995 preliminary design review for the ASTRA 1H satellite, which satellites were being exported and sold to SES pursuant to a Department of Commerce license. The technical data improperly disclosed in this instance, as in the ASIASAT 3 matter, above, exceeded the conditions of the Commerce license (and required a State Department license, which was not sought) and concerned electrical power subsystems that contained unit level FECMA and worst case circuit analysis; such detailed design information is generally not releasable to foreign persons.

License and Reporting Requirements

(33) § 126.1(a) of the Regulations provides that it is the policy of the United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including China.

(34) § 126.1(e) of the Regulations provides that no sale or transfer and no proposal to sell or transfer any defense service may be made to any country referred to in this section and that any person who knows or has reason to know of any actual transfer of such services must immediately inform ODTC.

(35) § 127.1(a)(1) of the Regulations provides that it is unlawful to export or attempt to export from the United States any defense article or technical data or to furnish any defense service for which a license or written approval is required without first obtaining the required license or written approval from the Office of Defense Trade Controls.

(36) § 127.1(a)(3) of the Regulations provides that it is unlawful to conspire to export, import, reexport or cause to be exported, imported or reexported, any defense article or to furnish any defense service for which a license or written approval is required without first obtaining the

required license or written approval from the Office of Defense Trade Controls.

(37) § 127.1(a)(4) of the Regulations provides that it is unlawful to violate any terms and conditions of licenses or approvals.

(38) § 127.1(b) of the Regulations provides that any person who is granted a license or other approval is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad.

(39) § 127.1(d) of the Regulations provides that no person may willfully cause, or aid, abet, counsel, demand, induce, procure or permit the commission of any act prohibited by, or the omission of any act required by 22 U.S.C. § 2778, 22 U.S.C. § 2779, or any regulation, license, approval, or order issued thereunder.

(40) § 127.2 of the Regulations provides that it is unlawful to use any export document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required.

(41) § 130.9(a)(1) of the Regulations requires that each applicant must inform the Office of Defense Trade Controls as to whether it or its vendors have paid, or offered or agreed to pay, in respect of any sale for which a license or approval is requested: (i) political contributions in an aggregate amount of $5,000 or more or (ii) fees or commissions in an aggregate amount of $100,000 or more. If so, an applicant must provide the detailed information specified in §§ 130.10 and 130.11.

* * *

PART II - THE CHARGES

Charges 1-3

(42) The Respondents violated 22 C.F.R. § 127.1(a)(3) when on or about January 26, 1995, and continuing over the course of the next eight months, they conspired with Chinese authorities and other third party foreign nationals to furnish defense services to China related to the failure and future functioning of the Long March 2E space launch vehicle (SLV) following the APSTAR II accident, for which a license or other written approval was required; violated § 126.1(e) concerning prohibited exports, when they offered defense services (i.e., "proposed") in connection with the failed launch of the Apstar II; and also violated § 127.1(d) when they willfully caused or aided, abetted, counseled, demanded, induced, procured or permitted the commission of an act prohibited by a regulation issued pursuant to 22 U.S.C. § 2778.

Charges 4-14

(43) Respondent BSS violated § 127.1(a)(1) of the Regulations when, without the required license or other approval from ODTC, the Failure Investigation Team provided expert analysis and advice in spacecraft debris, material properties, video analysis, telemetry, coupled loads, structures and aerodynamics, summarized in a 38-page report; when the Spacecraft Team provided expert analysis and advice in assessing the work of the Failure Team and whether or how the satellite contributed to the failure, summarized in an 84-page report; and, when the International Oversight Team provided expert analysis and advice in three meetings held between April and June 1995 during which the results of the investigation were discussed.

Charges 15-17

(44) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 10, 1995, without the required license or other written approval from ODTC, it identified for Chinese authorities the incorrect seating during flight of the LV clamp band; diagnosed that LV clamp band slippage was possibly caused by vibrations and the choice of lubricant on the band; and recommended review of this area by Chinese authorities prior to future flights.

Charges 18-20

(45) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 10,1995, without the required license or other written approval from ODTC, it identified for Chinese authorities possible design flaws in the venting system of the payload fairing (or nose cone of the rocket); compared it to Western standards; and recommended that Chinese authorities review this area prior to future launches.

Charges 21-23

(46) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 10, 1995, without the required license or other written approval from ODTC, it provided for Chinese authorities expert identification of possible design flaws in the nose dome of the fairing and of similarities in the probable failure of the nose dome for both Apstar II and Optus B2 detected by Respondents' analysis of payload fairing debris recovered from the two accidents.

Charges 24-25

(47) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 9-10, 1995 and May 8, 1995, without the required license or other written approval from ODTC, it provided for Chinese authorities expert identification of inaccuracies, omissions and the like associated with Chinese debris investigation and, further, provided insights into U.S. analytical techniques concerning recovered debris, which Respondent supported with technical drawings, photographs and modeling where expedient.

Charges 26-31

(48) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 13, 1995 and April 12-13, 1995, without the required license or other written approval from ODTC, it identified for Chinese authorities telemetry data as an important -- if not the most important -- source of information regarding the failure; it disclosed to China how their (i.e., CALT and CGWIC) analysis of telemetry data revealed deficiencies with respect to four

areas -- trajectory corrections due to wind shear effects, incorrect interpretations of accelerometer data, a probable anomaly with the clamp band, and a probable fault with the payload fairing venting process --; and it outlined for China the history of the flight compiled from telemetry data, including seventy-seven individual points that were critical to the Respondents' analysis.

Charges 32-36

(49) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about February 13, 1995 and May 8, 1995, without the required license or other written approval from ODTC, it jointly conducted with Chinese authorities a re-analysis of the coupled load analysis (CLA)[29], in which expert advice was shared by Respondent with respect to U.S. expertise in modeling, calculations and methodologies in order to affirm or critique pre-flight modeling conducted by the Chinese, alone, and to demonstrate, in particular, deficiencies in China's pre-flight CLA with respect to its failure to account for high winds aloft and buffeting and the Long March 2E's guidance system failure to compensate for upper level winds.

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[29] CLA simulates and assesses interplay of the loads on the SLV during flight, including interaction of the SLV and the satellite. The Respondents concluded that the Chinese had not performed an analysis of the cantilevered loads from the payload stack to the fairing and, hence, had no real idea of the true loads on the fairing arising from wind shear and buffeting. Respondents have maintained as of December 3, 2002, that they did not "jointly conduct" a CLA and that all they did "was check to be sure that it (Hughes) had properly prepared the Hughes data for the CLA" and did not overlook anything. (See December 3, 2002 letter from Turk to Lowell.) However, according to information in Respondents' own files, the coupled loads team "reviewed all of the coupled loads analysis information that was available…. They compared the flight data from the spacecraft accelerometers that have flown on the Long March, the Atlas, and the Ariane. *They traveled to Beijing to work beside the CALT engineers to review and participate in the Coupled Loads Analysis methodology.* (emphasis added) They expanded the standard spacecraft dynamic model (normally good to 75 Hz) to be valid up to 100 Hz." See HSC 002803.

Charges 37-38

(50) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about March 8, 1995, without the required license or other written approval from ODTC, it compared and contrasted for Chinese authorities China's CLA with Western expert analysis related to the U.S. Atlas and French Ariane SLVs.

Charge 39

(51) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about June 14, 1995, without the required license or other written approval from ODTC, Respondent's consultant furnished to Chinese authorities in a letter dated June 14, 1995, addressed to Liu Zhixiong (CGWIC Vice President) and Donald Cromer (HSC Vice President) conclusions with respect to the APSTAR II launch failure, as well as its likely cause and suggestions for further evaluation by China.[30]

Charges 40-41

(52) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about March 15, 1995,[31] without the required license or other written approval from ODTC, it provided to Chinese authorities the results of an analysis of China's payload fairing and identified flaws in the rivets used to secure the zipper area of the fairing.[32]

Charges 42-43

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[30] Respondents assert that the characterization of the IOT team member as "Respondents' consultant" is a mischaracterization and that in sending the referenced letter, the person was acting as an independent member of the IOT and not as Hughes' agent. However, information available to ODTC confirms that Respondents in fact, arranged this person's participation in the IOT and that Respondents viewed him as their "consultant."

[31] See Apstar 2 Failure Investigation Report Structure's Group Status Report of March 15, 1995.

[32] A "zipper" holds the fairing's two halves together.

(53) Respondent BSS violated § 127.1(a)(1) of the Regulations when, without the required license or other written approval from ODTC, it identified for Chinese authorities possible design flaws and improper installation associated with the launch vehicle clamp band.[33]

Charges 44-45

(54) Respondent BSS violated § 127.1(a)(1) of the Regulations when, without the required license or other written approval from ODTC, it identified material and design faults with the Chinese-manufactured interface adapter and recommended to China more detailed analyses and development tests on specific interface hardware and integrated spacecraft, third stage and adapters for the future.[34]

Charge 46

(55) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about April 21, 1995, without the required license or other written approval from ODTC, it provided to Sun Jiadong copies of the APSTAR II failure review charts and the APSTAR II failure review status report.

Charge 47

(56) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about April 24, 1995, without the required license or other written approval from ODTC, it provided to a third country foreign national[35] copies of the same (as in Charge 45, above) APSTAR II failure review charts and the APSTAR II failure review status report.

Charges 48-55

(57) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about May 22, May 23 and June 5, 1995, without the required license or other written approval

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[33] See Apstar 2 Failure Review Management Splinter Meeting of April 12, 1995.

[34] See Structure's Group Status Report of April 12, 1995.

[35] Pierre Madon, a foreign national member of the APSTAR II launch failure international oversight team.

from ODTC, it provided briefings to Sun Jiadong and the same third country foreign national (as in Charge 47, above) concerning LM-2E failure conclusions; telemetry information; response to CALT video; and, interstage conclusions.

Charges 56-60

(58) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about October 25, 1995, at a meeting in Beijing, without the required license or other written approval from ODTC, it provided detailed briefings to Chinese authorities and APT (as well as other foreign persons) concerning the APSTAR II failure investigative process, its summary conclusions, failure scenarios, fishbone diagram and corrective actions.

Charge 61

(59) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about October 31, 1995, at a meeting in Munich, without the required license or other written approval from ODTC, it provided similar briefings (as in Charges 56-60, above) to fifty-one foreign persons representing insurance underwriters.

Charge 62

(60) The Respondents violated § 126.1(e) of the Regulations when they failed, until directed to do so in writing by ODTC in May 1996, to inform ODTC of the actual transfer of defense services they had made, or knew or had reason to know of, as outlined above, to a country prohibited by § 126.1(a).

INTELSAT 708

Charges 63-64

(61) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about March 9, 1996, it conducted a survey of the crash site of the INTELSAT 708 spacecraft and China's Xichang space launch facility and on or about March 10, 1996, it described for Chinese authorities twenty-five (25) corrective actions that China needed to implement at the Xichang space launch facility in order to ensure

Respondents' commitment to the launch of APSTAR 1A on the Long March 3 SLV. [36]

Charge 65

(62) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about April 15-16, 1996, without a license or other written approval from ODTC it participated in a briefing hosted by Chinese authorities on the Long March 3B failure and outlined its (Respondent's) findings for the benefit of insurance brokers from the aforesaid launch site survey of the crash.

Charge 66-67

(63) Respondent BSS (formerly HSC) violated § 126.1(e) of the Regulations when, on or about April 16, 1996, it agreed to the charter for an Independent Review Committee (IRC) proposed by Chinese authorities for the INTELSAT 708 launch failure investigation, which charter itself contemplated the transfer of defense services to a country referred to in § 126.1, without a license or other written approval from ODTC and Respondent HE also violated § 126.1(e) when it failed to immediately inform ODTC of the proposed transfer, HE having known of the proposed investigation as a result of its senior management's visit to the PRC on the proposal after April 9, 1996.[37]

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[36] Respondents have maintained as of December 3, 2002 (Id) that the 25 action items were authorized under the Commerce license pursuant to "Go/No Go Criteria Exchange" and "Safety Plans." However, Respondents own files indicate that they, themselves, did not consider the 25 action items to be covered under the rubric of range safety; certainly there is no basis in practice to support any such interpretation by Respondents. See HSC's June 27, 1996 Report to ODTC on Alleged Violations of the ITAR (p. 4). More fundamentally, it is clear that the 25 action items related principally to the repair of the launch facility (i.e., "items to be fixed or replaced"; e.g., windows, electrical supply, etc.), that repair of a space launch facility is quintessentially a defense service, and that assistance in the repair of the launch facility is expressly prohibited by the U.S.-PRC bilateral agreement.

[37] Respondents maintain that the general prohibition on proposals to furnish defense services to countries

Charge 68

(64) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about April 26, 1996, without a license or other written approval from ODTC its chief scientist, one of two expert representatives in the IRC, discussed thoroughly with GW Aerospace[38] possible failure causes other than the control and guidance, including engine performance and structural issues associated with Long March 3B.[39]

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proscribed at § 126.1 does not apply in this instance because the agreement of their experts to the defense services envisaged in the IRC charter proposed by Chinese authorities does not meet what they consider to be a limiting definition of "proposals" in § 126.8. However, that latter provision merely details the procedures to be followed for prior notification and prior approval (which Respondents did not follow in any case) when proposals are made to sell or transfer significant military equipment; it does not provide a limiting definition of the term "proposal" as used in § 126.1(e). In fact, the term "proposal" as used in § 126.1(e) appropriately covers the acceptance of proposals made to U.S. persons by senior military authorities of proscribed destinations, as well as proposals initiated by U.S. persons. In the case of the IRC charter, each member, including Respondents' personnel, agreed to the terms of the charter. Regardless of how "proposals" with regard to proscribed countries may be initiated, § 126.1(e) makes abundantly clear that it is the policy of the Department of State to deny such proposals.

[38] GW Aerospace is a U.S. based consulting firm owned by CGWIC.

[39] Respondents have contended as of December 3, 2002, that the purpose of the meeting was simply for Steinhauer to be brought up to date on the results of the recent IRC meeting in Palo Alto and that information flow in this meeting was from GW Aerospace to their chief scientist Steinhauer -- not the other way around. However, Mr. Steinhauer's own report of the meeting with GW Aerospace is at odds with this contention as he describes detailed technical discussions between himself and Huang Zuoyi, the former chief designer of the Long March 2C while at CALT: "Thoroughly discussed the possibility of any other than control & guidance system failure causes, specifically including the eight-engine

Charges 69-77

(65) Respondent BSS violated § 127.1(a)(1) of the Regulations when, on or about April 10, 1996, without a license or other written approval from ODTC, its chief scientist transmitted nine questions concerning the launch failure investigation by facsimile to GW Aerospace for forwarding, in turn, to the Long March program office in Beijing, which questions were provided "in order to ensure that the anticipated Chinese failure report considered specific concerns related to the LM-3B failure and impact the cause of the failure may have on Hughes decision to launch APSTAR 1A satellite."[40]

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performance and structural issues." Also, "discussed the eight-engine versus four-engine lift-off vibration and acoustic environment at the IMU" and that "unusual acoustic reflections could be involved" which "CALT will look at…." In addition, Huang and Steinhauer discussed the details of the specific area where CALT believes the failure site to be located, leading Steinhauer to conclude that the Chinese probably have a very poor design with respect to manufacturability, particularly in respect to the soldering procedures in the LM3B IMU final assembly.

[40] Facsimile transmission from Steinhauer to Tian Guodang of GW Aerospace. Again, Respondents have asserted as of December 3, 2002, that these questions were about the LM 3B and concerned tests that were performed prior to flight, which cannot qualify as defense services. Even had these questions generally concerned prior tests (which they did not), Respondents' conclusion would still be wrong as such questions would nonetheless serve to direct Chinese authorities in their investigations to help explain the launch failure. However, in this instance the questions, themselves, were clearly designed to lead to the identification of the root cause of the failure for purposes of assuaging insurance underwriters and do not generally concern prior tests. For example, question no. 4) was: "Did problem occur in flight after lift-off, or was it pre-existing?" Question no. 7) was: "Explain three oscillations during 22's flight?" Question no. 9) was: Understand that launch vehicle platform at pad was rotated in order to correct for laser alignment of launch azimuth very close to lift-off of the LM 3B. Describe this activity and its implications on the launch performance."

Charges 78-101

(66) Respondent BSS violated § 127.1(a)(1) of the Regulations when, without a license or other written approval from ODTC, during the first IRC meeting (April 22-24, 1996, Palo Alto), together with other international experts who comprised the IRC, it delineated for Chinese authorities twenty-four areas[41] for further technical investigation and/or analysis upon concluding that simulation tests and other analysis presented to the IRC by CGWIC and CALT could not fully explain why, where or when the Long March rocket's inertial measurement unit (IMU) failed. Delineation of the twenty-four areas was for the purpose of identifying critical details of the failure mode then unanswered and of identifying corrective action by Chinese authorities based on the most likely cause(s) of the LM-3B failure and the isolation of these causes from the PRC's LM-3 rocket to be used for the, then, upcoming launch of APSTAR 1A manufactured by Respondent.

Charges 102-112

(67) Respondent BSS violated § 127.1(a)(1) of the Regulations during the second IRC meeting (April 30-May 1, 1996, Beijing), when, without a license or other approval from ODTC, after reviewing extensive documentation provided by Chinese authorities and interviewing or hearing presentations from over one hundred Chinese engineers and technical personnel, together with other international experts, it joined other IRC members in furnishing unauthorized defense services in eleven areas.[42]

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[41] These 24 areas set forth in the form of detailed technical questions and/or guidance or recommendations for specific follow-up analysis covered a range of potential factors associated with design, operation, manufacturing, testing and performance of PRC rockets, including the LM-3B, LM-3 and LM-2E.

[42] Specifically, the IRC: (1) concurred that the most likely failure mode was the inertial platform; (2) urged the Chinese to perform additional hardware in the loop testing or (3) computer analysis to simulate the complete failure cycle; recommended (4) additional acceptance test procedure, (5) design for producibility, (6) reliability operation, and (7) better IMU assembly procedure; (8) validated that the

Charge 113-114

(68) Respondent BSS violated § 127.1(a)(1) of the Regulations when, without a license or other written approval from ODTC, on or about May 1, 1996, it suggested to other IRC members, some of whom were foreign persons within the meaning of the Regulations, that the Beijing Control Institute should set up a way to incorporate an intermittent wire into their control simulation test and demonstrate the exact proposed failure scenario responses, such that China could confirm or refute its prior conclusion as to the cause of the failure[43] and when it suggested that a higher fidelity failure scenario test be performed in the CALT Control Institute laboratory.

Charge 115

(69) Respondent BSS violated § 126.1(e) of the Regulations when it failed to inform ODTC of the planned export of the IRC report to Chinese authorities.

APMT and Sino-Canada

Charges 116-117

(70) Respondents violated § 130.9 of the Regulations when they failed to make timely disclosure of $5 million in commissions paid and promised to Sino-Canada in connection with the procurement of the APMT satellite and also violated § 127.1(d) when they willfully caused, aided, abetted, counseled, demanded, induced, procured or permitted the

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LM-3 and LM-3B inertial platforms are separate and distinct owing to the LM-3's different inner gimbals drive circuit and redundancy by design; and specified additional test/analysis verification in three areas (9-11): continued study by the Chinese of the telemetered 15Hz resonant frequency (to include interviews of technical personnel who installed the IMU); and drawing up of a detailed list of IMUs of the LM 3A, 3B and 3C (to include their production, assembly, test locations and mission assignments).

[43] May 1, 1996, Steinhauer email to Herron regarding Smay test.

omission of an act required by a regulation issued pursuant to 22 U.S.C. § 2779.

APMT and Shen Jun

Charge 118

(71) Respondent BSS violated § 127.2 of the Regulations concerning misrepresentation and omission of material facts when it failed to disclose in connection with the submission of munitions license application no. 678638 on or about July 9, 1996, that Shen Jun was, in fact, the son of General Shen Rongjun whose interest and influence Respondents were cultivating in connection with the APMT procurement and in other matters concerning satellite-related exports to China more generally.[44]

ASIASAT 3

Charges 119-121

(72) Respondent BSS violated the provisions of § 127.1(a)(1) when in 1996 its employees provided ASIASAT personnel with detailed design technical data that exceeded the scope of its Department of Commerce license (and which was subject to State Department jurisdiction), without the required license or other written approval from ODTC, concerning unit-level FECMA, worst case circuit analysis, and the Xenon Ion propulsion system.

ASTRA 1G/1H

Charges 122-123

(73) Respondent BSS violated the provisions of § 127.1(a)(1) when in 1995 its employees improperly

[44] As noted at footnote 26, page 11 of this draft charging letter, Respondents contend that the fact of the son-father relationship between their employee on the APMT project and the PLA general officer overseeing the APMT project was not material to the license application because there is no place on the license application for disclosing such familial relationships of their employees with senior military officers of the PRC.

transferred detailed design technical data to SES during a 1995 critical design review for the ASTRA 1G satellite and a 1995 preliminary design review for the ASTRA 1H satellite, without the required license or other written approval from ODTC.

* * *

PART III - ADMINISTRATIVE PROCEEDINGS

(74) Pursuant to 22 C.F.R. § 128 administrative proceedings are instituted against Hughes Electronics Corp., including Hughes Network Systems, and The Boeing Company Boeing Satellite Systems (formerly Hughes Space and Communications) for the purpose of obtaining an Order imposing civil administrative sanctions that may include the imposition of debarment or civil penalties. The Assistant Secretary for Political Military Affairs shall determine the appropriate period of debarment, which shall generally be for a period of three years in accordance with § 127.7 of the Regulations. Civil penalties, not to exceed $500,000 per violation, may be imposed in accordance with § 127.10.

(75) A Respondent has certain rights in such proceedings as described in § 128, a copy of which I am enclosing. You are required to answer the charging letter within 30 days after service. A failure to answer will be taken as an admission of the truth of the charges. You are 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 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 ALJ Docketing Center, U.S. Coast Guard, 40 South Gay Street, Room 412, Baltimore, MD 21202-4022. A copy shall be simultaneously mailed to the Director, Office of Defense Trade Controls. Department of State, 2401 E Street, NW, Washington, D.C. If you do not demand an oral hearing, you must transmit within seven (7) days after the service of your answer, the 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. Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, cases may be settled

through consent agreements, including after service of a charging letter.

(76) Please be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the Arms Export Control Act and the International Traffic in Arms Regulations. The Department of State's decision to pursue one type of enforcement action does not preclude it or any other department or agency of the United States from pursuing another type of enforcement action.

(77) In this regard, please permit me to recall that I have previously provided you with a copy of a letter dated November 13, 2002, addressed to me by the Assistant Commissioner for Investigations, U.S. Customs Service, informing me that U.S. Customs is considering bringing civil forfeiture proceedings against property owned by you. Under federal law, property involved in violations of the AECA and certain other statutes (e.g., Money Laundering Control Act, 18 U.S.C. 1956) is subject to civil forfeiture. This includes real estate that is used to facilitate these violations.

Sincerely,

W Lowell

William J. Lowell
Director

Enclosures

cc: Artis M. Noel
Counsel
General Motors Corp.

Robert Catania
Chief Counsel
Boeing Satellite Systems, Inc.

Richard Hoglund (Acting)
Assistant Commissioner
(Investigations)
U.S. Customs Service

[Code of Federal Regulations]
[Title 22, Volume 1]
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[Page 496-502]

TITLE 22--FOREIGN RELATIONS

CHAPTER I--DEPARTMENT OF STATE

PART 128--ADMINISTRATIVE PROCEDURES

Sec.

[[Page 497]]

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.

Sec. 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 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]

Sec. 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 Secs. 127.7, 127.8, and 128.3 through 128.16 of this subchapter.

[61 FR 48831, Sept. 17, 1996]

Sec. 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 Sec. 127.7 or Sec. 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 Sec. 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]

[[Page 498]]

Sec. 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]

Sec. 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 Sec. 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]

Sec. 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

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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 he 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]

Sec. 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.

(3) *The conference proceedings may be recorded magnetically or taken* by a reporter and transcribed, and filed with the Administrative Law Judge.

(b) If a conference is impracticable , the Administrative Law Judge may request the parties to correspond with the person to achieve the purposes of a conference. The Administrative Law Judge shall prepare a summary of action taken as in the case of a conference.

[61 FR 48832, Sept. 17, 1996]

Sec. 128.8 Hearings.

(a) A respondent who had not filed a timely written answer is not entitled to a hearing, and the case may be considered by the Administrative Law Judge as provided in Sec. 128.4(a). If any answer is filed, but no oral hearing demanded, the Administrative Law Judge may proceed to consider the case upon the written pleadings and evidence available. The Administrative Law Judge may provide for the making of the record in such manner as the Administrative Law Judge deems appropriate. If respondent answers and demands an oral hearing, the Administrative Law Judge, upon due notice, shall set the case for hearing, unless a respondent has raised in his answer no

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issues of material fact to be determined. If respondent fails to appear at a scheduled hearing, the hearing nevertheless may proceed in respondent's absence. The respondent's failure to appear will not affect the validity of the hearing or any proceedings or action thereafter.

(b) The Administrative Law Judge may administer oaths and affirmations. Respondent may be represented by counsel. Unless otherwise agreed by the parties and the Administrative Law Judge the proceeding will be taken by a reporter or by magnetic recording, transcribed, and filed with the Administrative Law Judge. Respondent may examine the transcript and may obtain a copy upon payment of proper costs.

[61 FR 48833, Sept. 17, 1996]

Sec. 128.9 Proceedings before and report of Administrative Law Judge.

(a) The Administrative Law Judge may conform any part of the proceedings before him or her to the Federal Rules of Civil Procedure. The record may be made available in any other administrative or other proceeding involving the same respondent.

(b) The Administrative Law Judge, after considering the record, will prepare a written report. The report will include findings of fact, findings of law, a finding whether a law or regulation has been violated, and the Administrative Law Judge's recommendations. It shall be transmitted to the Assistant Secretary for Political-Military Affairs, Department of State.

[61 FR 48833, Sept. 17, 1996]

Sec. 128.10 Disposition of proceedings.

Where the evidence is not sufficient to support the charges, the Director, Office of Defense Trade Controls or the Administrative Law Judge will dismiss the charges. Where the Administrative Law Judge finds that a violation has been committed, the Administrative Law Judge's recommendation shall be advisory only. The Assistant Secretary for

Political-Military Affairs will review the record, consider the report of the Administrative Law Judge, and make an appropriate disposition of the case. The Director may issue an order debarring the respondent from participating in the export of defense articles or technical data or the furnishing of defense services as provided in Sec. 127.7 of this subchapter, impose a civil penalty as provided in Sec. 127.10 of this subchapter or take such action as the Administrative Law Judge deems appropriate. Any debarment order will be effective for the period of time specified therein and may contain such additional terms and conditions as are deemed appropriate. A copy of the order together with a copy of the Administrative Law Judge's report will be served upon the respondent.

[61 FR 48833, Sept. 17, 1996]

Sec. 128.11 Consent agreements.

(a) The Office of Defense Trade Controls and the respondent may, by agreement, submit to the Administrative Law Judge a proposal for the issuance of a consent order. The Administrative Law Judge will review the facts of the case and the proposal and may conduct conferences with the parties and may require the presentation of evidence in the case. If the Administrative Law Judge does not approve the proposal, the Administrative Law Judge will notify the parties and the case will proceed as though no consent proposal had been made. If the proposal is approved, the Administrative Law Judge will report the facts of the case along with recommendations to the Assistant Secretary for Political-Military Affairs. If the Assistant Secretary for Political-Military Affairs does not approve the proposal, the case will proceed as though no consent proposal had been made. If the Assistant Secretary for Political-Military Affairs approves the proposal, an appropriate order may be issued.

(b) Cases may also be settled prior to service of a charging letter. In such an event, a proposed charging letter shall be prepared, and a consent agreement and order shall be submitted for the approval and signature of the Assistant Secretary for Political-Military Affairs, and no action by the Administrative Law Judge shall be required. Cases which are settled may not be reopened or appealed.

[61 FR 48833, Sept. 17, 1996]

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Sec. 128.12 Rehearings.

The Administrative Law Judge may grant a rehearing or reopen a proceeding at any time for the purpose of hearing any relevant and material evidence which was not known or obtainable at the time of the original hearing. A report for rehearing or reopening must contain a summary of such evidence, and must explain the reasons why it could not have been presented at the original hearing. The Administrative Law Judge will inform the parties of any further hearing, and will conduct such hearing and submit a report and recommendations in the same manner as provided for the original proceeding (Described in Sec. 128.10).

[61 FR 48833, Sept. 17, 1996]

Sec. 128.13 Appeals.

(a) Filing of appeals. An appeal must be in writing, and be

addressed to and filed with the Under Secretary of State for Arms Control and International Security Affairs, Department of State, Washington, DC 20520. An appeal from a final order denying export privileges or imposing civil penalties must be filed within 30 days after receipt of a copy of the order. If the Under Secretary cannot for any reason act on the appeal, he or she may designate another Department of State official to receive and act on the appeal.

(b) Grounds and conditions for appeal. The respondent may appeal from the debarment or from the imposition of a civil penalty (except the imposition of civil penalties pursuant to a consent order pursuant to Sec. 128.11) upon the ground: (1) That the findings of a violation are not supported by any substantial evidence; (2) that a prejudicial error of law was committed: or (3) that the provisions of the order are arbitrary, capricious, or an abuse of discretion. The appeal must specify upon which of these grounds the appeal is based and must indicate from which provisions of the order the appeal is taken. An appeal from an order issued upon default will not be entertained if the respondent has failed to seek relief as provided in Sec. 128.4(b).

(c) Matters considered on appeal. An appeal will be considered upon the basis of the assembled record. This record consists of (but is not limited to) the charging letter, the respondent's answer, the transcript or magnetic recording of the hearing before the Administrative Law Judge, the report of the Administrative Law Judge, the order of the Assistant Secretary for Political-Military Affairs, and any other relevant documents involved in the proceedings before the Administrative Law Judge. The Under Secretary of State for Arms Control and International Security Affairs may direct a rehearing and reopening before the Administrative Law Judge if he or she finds that the record is insufficient or that new evidence is relevant and material to the issues and was not known and was not available to the respondent at the time of the original hearings.

(d) Effect of appeals. The taking of an appeal will not stay the operation of any order.

(e) Preparation of appeals.--(1) General requirements. An appeal shall be in letter form. The appeal and accompanying material should be filed in duplicate, unless otherwise indicated, and a copy simultaneously mailed to the Director, Office of Defense Trade Controls, SA-6, Room 200, Department of State, Washington, DC 20522-0620 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.

(2) Oral presentation. The Under Secretary of State for Arms Control and International Security Affairs may grant the appellant an opportunity for oral argument and will set the time and place for oral argument and will notify the parties, ordinarily at least 10 days before the date set.

(f) Decisions. All appeals will be considered and decided within a reasonable time after they are filed. An appeal may be granted or denied in whole or in part, or dismissed at the request of the appellant. The decision of the Under Secretary of State for Arms Control and International Security Affairs will be final.

[58 FR 39320, July 22, 1993, as amended at 61 FR 48833, Sept. 17, 1996]

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Sec. 128.14 Confidentiality of proceedings.

Proceedings under this part are confidential. The documents referred

to in Sec. 128.17 are not, however, deemed to be confidential. Reports of the Administrative Law Judge and copies of transcripts or recordings of hearings will be available to parties and, to the extent of their own testimony, to witnesses. All records are available to any U.S. Government agency showing a proper interest therein.

[61 FR 48834, Sept. 17, 1996]

Sec. 128.15 Orders containing probationary periods.

(a) Revocation of probationary periods. A debarment or interim suspension order may set a probationary period during which the order may be held in abeyance for all or part of the debarment or suspension period, subject to the conditions stated therein. The Director, Office of Defense Trade Controls, may apply without notice to any person to be affected thereby, to the Administrative Law Judge for an order revoking probation when it appears that the conditions of the probation have been breached. The facts in support of the application will be presented to the Administrative Law Judge, who will report thereon and make a recommendation to the Assistant Secretary for Political-Military Affairs. The latter will make a determination whether to revoke probation and will issue an appropriate order.

(b) Hearings--(1) Objections upon notice. Any person affected by an application upon notice to revoke probation, within the time specified in the notice, may file objections with the Administrative Law Judge.

(2) Objections to order without notice. Any person adversely affected by an order revoking probation, without notice may request that the order be set aside by filing his objections thereto with the Administrative Law Judge. The request will not stay the effective date of the order or revocation.

(3) *Requirements for filing objections. Objections filed with the* Administrative Law Judge must be submitted in writing and in duplicate. A copy must be simultaneously submitted to the Office of Defense Trade Controls. Denials and admissions, as well as any mitigating circumstances, which the person affected intends to present must be set forth in or accompany the letter of objection and must be supported by evidence. A request for an oral hearing may be made at the time of filing objections.

(4) Determination. The application and objections thereto will be referred to the Administrative Law Judge. An oral hearing if requested, will be conducted at an early convenient date, unless the objections filed raise no issues of material fact to be determined. The Administrative Law Judge will report the facts and make a recommendation to the Assistant Secretary for Political-Military Affairs, who will determine whether the application should be granted or denied and will issue an appropriate order. A copy of the order and of the Administrative Law Judge's report will be furnished to any person affected thereby.

(5) Effect of revocation on other actions. The revocation of a probationary period will not preclude any other action concerning a further violation, even where revocation is based on the further violation.

[61 FR 48834, Sept. 17, 1996]

Sec. 128.16 Extension of time.

The Administrative Law Judge, for good cause shown, may extend the time within which to prepare and submit an answer to a charging letter or to perform any other act required by this part.

[61 FR 48834, Sept. 17, 1996]

Sec. 128.17 Availability of orders.

All charging letters, debarment orders, orders imposing civil penalties, probationary periods, and interim suspension orders are available for public inspection in the Public Reading Room of the Department of State.