

#### §785.4

(b) *Content of a NOVA.* The NOVA shall constitute a formal complaint and will set forth the alleged violation(s) and the essential facts with respect to the alleged violation(s), reference the relevant statutory, regulatory or other provisions, and state the maximum amount of the civil penalty that could be assessed. The NOVA also will inform the respondent of the requirement to request a hearing pursuant to §785.4 of the APR.

(c) *Service of a NOVA.* Service of the NOVA shall be made by certified mail or courier delivery with signed acknowledgment of receipt. The date of signed acknowledgment of receipt shall be the effective date of service of the NOVA. One copy of each paper shall be provided to each party in the delivery. BIS files the NOVA with the Administrative Law Judge (ALJ) at the same time that it is sent to the respondent. The ALJ, in turn, will place the case on its docket and will notify both the respondent and BIS of the docket information.

#### §785.4 Request for hearing and answer.

(a) *Deadline for answering the NOVA.* If the respondent wishes to contest the NOVA issued by BIS, the respondent must submit a written request for a hearing to BIS within 15 business days from the date of service of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 calendar days from the date of the request for hearing. The request for a hearing and the respondent's answer to the NOVA must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA, and served on the Office of Chief Counsel, and any other address(es) specified in the NOVA, in accordance with §785.6 of the APR.

(b) *Content of respondent's answer.* The respondent's answer must be responsive to the NOVA and must fully set forth the nature of the respondent's defense(s). The answer must specifically admit or deny each separate allegation in the NOVA; if the respondent is without knowledge, the answer will so state and this will serve as a denial. Failure to deny or controvert a particular allegation will be deemed to be an admis-

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sion of that allegation. The answer must also set forth any additional or new matter that the respondent contends will support a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed to be waived, and evidence supporting that defense or partial defense may be refused, except for good cause shown.

(c) *English required.* The request for hearing, the answer to the NOVA, and all other papers and documentary evidence must be submitted in English.

(d) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times prescribed in paragraph (a) of this section constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA. If no hearing is requested and no answer is provided, a final order will be signed by the Secretary of Commerce, or by a designated United States Government official, and will constitute final agency action in the case.

#### §785.5 Representation.

An individual respondent may appear, in person, or be represented by a duly authorized officer or employee. A partner may appear on behalf of a partnership, or a duly authorized officer or employee of a corporation may appear on behalf of the corporation. If a respondent is represented by counsel, counsel shall be a member in good standing of the bar of any State, Commonwealth or Territory of the United States, or of the District of Columbia, or be licensed to practice law in the country in which counsel resides, if not the United States. The U.S. Government will be represented by the Office of Chief Counsel. A respondent personally, or through counsel or other representative who has the power of attorney to represent the respondent, shall file a notice of appearance with the ALJ, or, in cases where settlement negotiations occur before any filing with the ALJ, with the Office of Chief Counsel.