

Commerce shall serve the NOVA as directed by the Secretary.

(b) *Content of NOVA.* The NOVA shall constitute a formal complaint, and will set forth the basis for the issuance of the proposed order. It 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 amount of the civil penalty to be assessed. The NOVA will inform the respondent of the right to request a hearing pursuant to paragraph (e) of this section and the CWCR (15 CFR parts 710 through 722) at 15 CFR 719.6, inform the respondent that failure to request such a hearing shall result in the proposed order becoming final and unappealable on signature of the Secretary of State, and provide payment instructions. A copy of the regulations that govern the administrative proceedings will accompany the NOVA.

(c) *Proposed order.* A proposed order shall accompany every NOVA. It will briefly set forth the substance of the alleged violation(s) and the statutory, regulatory or other provisions violated. It will state the amount of the civil penalty to be assessed.

(d) *Notice.* The Secretary shall notify, via the Department of Commerce, the respondent (or respondent's agent for service of process or attorney) of the initiation of administrative proceedings by sending, via first class mail, facsimile, or by personal delivery, the relevant documents.

(e) *Time to answer.* If the respondent wishes to contest the NOVA and proposed order issued by the Secretary, the respondent must request a hearing in writing within 15 days from the date of the NOVA. If the respondent requests a hearing, the respondent must answer the NOVA within 30 days from the date of the request for hearing. The request for hearing and answer must be filed with the Administrative Law Judge (ALJ), along with a copy of the NOVA and proposed order, and served on the Office of Chief Counsel for Export Administration, Department of Commerce, and any other address(es) specified in the NOVA, in accordance with 15 CFR 719.8.

(f) *Content of answer.* The respondent's answer must be responsive to the NOVA and proposed order, 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 will operate as a denial. Failure to deny or controvert a particular allegation will be deemed an admission of that allegation. The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. Any defense or partial defense not specifically set forth in the answer shall be deemed waived, and evidence thereon may be refused, except for good cause shown.

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

(h) *Waiver.* The failure of the respondent to file a request for a hearing and an answer within the times provided constitutes a waiver of the respondent's right to appear and contest the allegations set forth in the NOVA and proposed order. If no hearing is requested and no answer is provided, the Secretary will sign the proposed order, which shall, upon signature, become final and unappealable.

(i) *Administrative procedures.* The regulations that govern the administrative procedures that apply when a hearing is requested are set forth in the CWCR at 15 CFR part 719.

§ 103.8 Final agency decision after administrative proceedings.

(a) *Review of initial decision.* (1) *Petition for review.* Any party may, within 7 days of the Administrative Law Judge's (ALJ) certification of the initial decision and order, petition the Secretary for review of the initial decision. A petition for review shall be addressed to and served on the Executive Director of the Office of the Legal Adviser, U.S. Department of State, 2201 C Street, N.W., Room 5519, Washington D.C. 20520, and shall also be served on the Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room H-3839, Washington, D.C.

20230, and on the respondent. Petitions for review may be filed only on one or more of the following grounds:

- (i) That a necessary finding of fact is omitted, erroneous or not supported by substantial evidence of record;
- (ii) That a necessary legal conclusion or finding is contrary to law;
- (iii) That a prejudicial procedural error has occurred; or
- (iv) That the decision or the extent of sanctions is arbitrary, capricious or an abuse of discretion.

(2) *Content of petition for review.* The petition must specifically set forth the grounds on which review is requested and be supported by citations to the record, statutes, regulations, and principal authorities.

(3) *Decision to review.* Review of the initial decision by the Secretary is discretionary, and is not a matter of right. The Secretary shall accept or decline review of the initial decision and order within 3 days after a petition for review is filed. If no such petition is filed, the Secretary may, on his or her own initiative, notify the parties within 10 days after the ALJ's certification of the initial decision and order that he or she intends to exercise his or her discretion to review the initial decision.

(4) *Effect of decision to review.* The initial decision is stayed until further order of the Secretary upon a timely petition for review, or upon action to review taken by the Secretary on his or her own initiative.

(5) *Review declined.* If the Secretary declines to exercise discretionary review, such order, and the resulting final agency decision, will be served on all parties personally, by overnight mail, or by registered or certified mail, return receipt requested. The Secretary need not give reasons for declining review.

(6) *Review accepted.* If the Secretary grants a petition for review or decides to review the initial decision on his or her own initiative, he or she will issue an order confirming that acceptance and specifying any issues to be briefed by all parties within 10 days after the order. Briefing shall be limited to the issues specified in the order. Only those issues specified in the order will be considered by the Secretary. The par-

ties may, within 5 days after the filing of any brief of the issues, file and serve a reply to that brief. The Department of Commerce shall review all written submissions, and, based on the record, make a recommendation to the Secretary as to whether the ALJ's initial decision should be modified or vacated. The Secretary will make a final decision within 30 days after the ALJ's certification of the initial decision and order.

(b) *Final decision.* Unless the Secretary, within 30 days after the date of the ALJ's certification of the initial decision and order, modifies or vacates the decision and order, with or without conditions, the ALJ's initial decision and order shall become effective as the final decision and order of the United States Government. If the Secretary does modify or vacate the initial decision and order, that decision and order of the Secretary shall become the final decision and order of the United States Government. The final decision and order shall be served on the parties and will be made available to the public.

(c) *Computation of time for the purposes of this section.* In computing any period of time prescribed or allowed by this section, the day of the act, event, or default from which the designated period of time begins to run is not included. The last day of the period is computed to be included unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 6(a) of the Federal Rules of Civil Procedure), in which case the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period of time prescribed or allowed is 7 days or less.

§ 103.9 Final agency decision after settlement negotiations.

(a) *Settlements based on letter of intent to charge—(1) Approval of settlement.* Pursuant to § 719.5(b) of the CWCR (15 CFR parts 710 through 722), the Department of Commerce may notify a respondent by letter of the intent to charge. If, following the issuance of such a letter of intent to charge, the Department of Commerce and respondent reach an agreement to settle a