

**§ 785.18 Record for decision.**

(a) *The record.* The transcript of hearings, exhibits, rulings, orders, all papers and requests filed in the proceedings, and, for purposes of any appeal under § 785.16 of the APR, the decision of the ALJ and such submissions as are provided for under § 785.16 of the APR will constitute the record and the exclusive basis for decision. When a case is settled, the record will consist of any and all of the foregoing, as well as the NOVA or draft NOVA, settlement agreement, and order.

(b) *Restricted access.* On the ALJ's own motion, or on the motion of any party, the ALJ may direct that there be a restricted access portion of the record for any material in the record to which public access is restricted by law or by the terms of a protective order entered in the proceedings. A party seeking to restrict access to any portion of the record is responsible, prior to the close of the proceeding, for submitting a version of the document(s) proposed for public availability that reflects the requested deletion. The restricted access portion of the record will be placed in a separate file and the file will be clearly marked to avoid improper disclosure and to identify it as a portion of the official record in the proceedings. The ALJ may act at any time to permit material that becomes declassified or unrestricted through passage of time to be transferred to the unrestricted access portion of the record.

(c) *Availability of documents—(1) Scope.* All NOVAs and draft NOVAs, answers, settlement agreements, decisions and orders disposing of a case will be displayed on the BIS Freedom of Information Act (FOIA) Web site, at <http://www.bis.doc.gov/foia>, which is maintained by the Office of Administration, Bureau of Industry and Security, U.S. Department of Commerce. The Office of Administration does not maintain a separate inspection facility. The complete record for decision, as defined in paragraphs (a) and (b) of this section will be made available on request.

(2) *Timing.* The record for decision will be available only after the final administrative disposition of a case. Parties may seek to restrict access to

any portion of the record under paragraph (b) of this section.

**§ 785.19 Payment of final assessment.**

(a) *Time for payment.* Full payment of the civil penalty must be made within 30 days of the effective date of the order or within such longer period of time as may be specified in the order. Payment shall be made in the manner specified in the NOVA.

(b) *Enforcement of order.* The government party may, through the Attorney General, file suit in an appropriate district court if necessary to enforce compliance with a final order issued under the APR. This suit will include a claim for interest at current prevailing rates from the date of expiration of the 60-day period referred to in § 785.16(d), or the date of the final order, as appropriate.

(c) *Offsets.* The amount of any civil penalty imposed by a final order may be deducted from any sum(s) owed by the United States to a respondent.

**§ 785.20 Reporting a violation.**

If a person learns that a violation of the Additional Protocol, the Act, or the APR has occurred or may occur, that person may notify: Office of Export Enforcement, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room H-4520, Washington, DC 20230; Tel: (202) 482-1208; Facsimile: (202) 482-0964.

**PART 786—RECORDS AND RECORDKEEPING**

Sec.

786.1 Inspection of records.

786.2 Recordkeeping.

786.3 Destruction or disposal of records.

**AUTHORITY:** United States Additional Protocol Implementation Act of 2006, Pub. Law No. 109-401, 120 Stat. 2726 (December 18, 2006) (to be codified at 22 U.S.C. 8101-8181); Executive Order 13458 (February 4, 2008).

**SOURCE:** 73 FR 65128, Oct. 31, 2008, unless otherwise noted.

**§ 786.1 Inspection of records.**

Upon request by BIS, you must permit access to and copying of any record relating to compliance with the requirements of the APR. This requires

that you make available the equipment and, if necessary, knowledgeable personnel for locating, reading, and reproducing any record. Copies may be necessary to facilitate IAEA Team review of documents during complementary access. The IAEA Team may not remove these documents from the location without BIS authorization (see § 784.3(j)(2) of the APR).

#### § 786.2 Recordkeeping.

(a) *Requirements.* Each person and location required to submit a report or correspondence under parts 782 through 784 of the APR must retain all supporting materials and documentation used to prepare such report or correspondence.

(b) *Three year retention period.* All supporting materials and documentation required to be kept under paragraph (a) of this section must be retained for three years from the due date of the applicable report or for three years from the date of submission of the applicable report, whichever is later. Due dates for reports and correspondence are indicated in parts 782 through 784 of the APR.

(c) *Location of records.* Records retained under this section must be maintained at the location or must be accessible at the location for purposes of complementary access at the location by IAEA Teams.

(d) *Reproduction of original records.* (1) You may maintain reproductions instead of the original records, provided all of the requirements of paragraph (b) of this section are met.

(2) If you must maintain records under this part, you may use any photostatic, miniature photographic, micrographic, automated archival storage, or other process that completely, accurately, legibly and durably reproduces the original records (whether on paper, microfilm, or through electronic digital storage techniques). The process must meet all of the following requirements, which are applicable to all systems:

(i) The system must be capable of reproducing all records on paper.

(ii) The system must record and be able to reproduce all marks, information, and other characteristics of the original record, including both obverse

and reverse sides (unless blank) of paper documents in legible form.

(iii) When displayed on a viewer, monitor, or reproduced on paper, the records must exhibit a high degree of legibility and readability. For purposes of this section, legible and legibility mean the quality of a letter or numeral that enable the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readable and readability mean the quality of a group of letters or numerals being recognized as complete words or numbers.

(iv) The system must preserve the initial image (including both obverse and reverse sides, unless blank, of paper documents) and record all changes, who made them and when they were made. This information must be stored in such a manner that none of it may be altered once it is initially recorded.

(v) You must establish written procedures to identify the individuals who are responsible for the operation, use and maintenance of the system.

(vi) You must keep a record of where, when, by whom, and on what equipment the records and other information were entered into the system.

(3) *Requirements applicable to a system based on digital images.* For systems based on the storage of digital images, the system must provide accessibility to any digital image in the system. The system must be able to locate and reproduce all records according to the same criteria that would have been used to organize the records had they been maintained in original form.

(4) *Requirements applicable to a system based on photographic processes.* For systems based on photographic, photostatic, or miniature photographic processes, the records must be maintained according to an index of all records in the system following the same criteria that would have been used to organize the records had they been maintained in original form.

#### § 786.3 Destruction or disposal of records.

If BIS or any other authorized U.S. government agency makes a formal or informal request for a certain record or records, such record or records may not

**Bureau of Industry and Security, Commerce**

**§ 786.3**

be destroyed or disposed of without the written authorization of the requesting entity.

**PARTS 787–799 [RESERVED]**