

Bureau of Industry and Security, Commerce

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advance notice, then the availability of an advance team may be limited. The location requesting advance team assistance will not be required to reimburse the U.S. Government for any costs associated with these activities. The location (in cooperation with the advance team, if available) will make preparations for complementary access, including the identification of any ITAR-controlled technology and/or national security information at the location (see § 784.3(b)(3) of the APR).

(2) *Notification procedures.* The following table sets forth the notification procedures for complementary access.

TABLE TO § 784.4(A)(2)

Activity	Agency action	Location action
IAEA notification of complementary access.	<p>BIS will transmit complementary access notification via facsimile to the owner, operator, occupant, or agent in charge of a location to ascertain whether or not the location:</p> <p>(1) Grants consent to complementary access; and</p> <p>(2) Requests BIS advance team support (subject to availability) in preparing for complementary access.</p> <p>If the location does not inform BIS of its consent to complementary access, within 4 hours of the time it receives notification from BIS, BIS will seek an administrative warrant.</p>	<p>Location must inform BIS, within 4 hours of its receipt of complementary access notification, whether or not it:</p> <p>(1) Grants consent to complementary access; and</p> <p>(2) Requests BIS advance team support (subject to availability) to prepare for complementary access. Location not required to reimburse U.S. Government for assistance from the BIS advance team.</p>

TABLE TO § 784.4(A)(2)—Continued

Activity	Agency action	Location action
Preparation for complementary access.	If a BIS advance team has been requested and is available, it will arrive at the location to be accessed and assist the location in making logistical and administrative preparations for complementary access.	The location will engage in activities that will prepare the location for complementary access (e.g., identifying any ITAR-controlled technology or national security information at the location), either singularly or in cooperation with a BIS advance team if one has been requested and is available.

(3) *Timing of notification.* In accordance with the Additional Protocol, the IAEA shall notify the United States Government of a complementary access request not less than 24 hours prior to the arrival of the IAEA Team at the location. BIS will provide written notice to the owner, operator, occupant or agent in charge of the location as soon as possible after BIS has received notification from the IAEA.

(b) *Duration of complementary access.* The duration of complementary access will depend upon the nature of the complementary access request and the activities that will be conducted at the location. (See § 784.3(b) of the APR for a description of the types of complementary access activities authorized under the APR.)

§ 784.5 Subsidiary arrangements.

(a) *General subsidiary arrangement.* The United States Government may conclude a general subsidiary arrangement with the IAEA that governs complementary access activities, irrespective of the location (i.e., an arrangement that is not location-specific).

(b) *Location-specific subsidiary arrangement—(1) Purpose.* If requested by the location or deemed necessary by the U.S. Government, the U.S. Government will negotiate a location-specific subsidiary arrangement with the IAEA. The purpose of such an arrangement is to establish procedures for conducting managed access at a specific declared location. If the location requests, it

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may participate in preparations for the negotiation of a location-specific subsidiary arrangement with the IAEA and may observe the negotiations to the maximum extent practicable. The existence of a location-specific subsidiary arrangement does not in any way limit the right of the owner, operator, occupant, or agent in charge of the location to withhold consent to a request for complementary access.

(2) *Format and content.* The form and content of a location-specific subsidiary arrangement will be determined by the IAEA and the U.S. Government, in consultation with the location, on a case-by-case basis.

§ 784.6 Post complementary access activities.

Upon receiving the IAEA's final report on complementary access, BIS will forward a copy of the report to the location for its review, in accordance with § 784.3(k)(2) of the APR. Locations may submit comments concerning the IAEA's final report to BIS, and BIS will consider them, as appropriate, when preparing its comments to the IAEA on the final report. BIS also will send locations a post complementary access letter detailing the issues that require follow-up action (see, for example, the *Amended Report* requirements in § 783.2(d) of the APR).

PART 785—ENFORCEMENT

Sec.

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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.

§ 785.1 Scope and definitions.

(a) *Scope.* This Part 785 describes the sanctions that apply to violations of the Act and the APR. It also establishes detailed administrative procedures for certain violations of the Act. Violations for which the statutory basis is the Act are set forth in § 785.2 of the APR. BIS investigates these violations, prepares charges, provides legal representation to the U.S. Government, negotiates settlements, and initiates and resolves proceedings. The administrative procedures applicable to these violations are described in §§ 785.3 through 785.19 of the APR.

(b) *Definitions.* The following are definitions of terms as used only in part 785 of the APR. For definitions of terms applicable to parts 781 through 786 of the APR, unless otherwise noted in this paragraph or elsewhere in the APR, see part 781 of the APR.

The Act. The U.S. Additional Protocol Implementation Act of 2006 (Public Law 109–401, 120 Stat. 2726 (December 18, 2006)).

Assistant Secretary for Export Enforcement. The Assistant Secretary for Export Enforcement, Bureau of Industry and Security, United States Department of Commerce.

Final decision. A decision or order assessing a civil penalty, or otherwise disposing of or dismissing a case, which is not subject to further administrative review, but which may be subject to collection proceedings or judicial review in an appropriate Federal court as authorized by law.

Office of Chief Counsel. The Office of Chief Counsel for Industry and Security, United States Department of Commerce.

Recommended decision. A decision of the administrative law judge in proceedings involving violations of part