

§ 784.2

(2) Provide prior written notification to any location that is scheduled to undergo complementary access;

(3) Take appropriate action to obtain an administrative warrant in the event that a location does not consent to complementary access;

(4) Upon request of the location, dispatch an advance team, if time and other circumstances permit, to the location to provide administrative and logistical support for complementary access and to assist with preparation for such access;

(5) Accompany the IAEA Team throughout the duration of complementary access;

(6) Assist the IAEA Team with complementary access activities and ensure that each activity adheres to the provisions of the Additional Protocol and to the requirements of the APR and the Act, including the conditions of any warrant issued thereunder; and

(7) Assist in the negotiation and development of a location-specific subsidiary arrangement between the U.S. Government and the IAEA, if appropriate (see § 784.5 of the APR).

NOTE TO § 784.1(d): BIS may invite representatives from other U.S. Government agencies to participate as members of the Advance and Host Teams for complementary access. The Host Team will not include employees of the Environmental Protection Agency, the Mine Safety and Health Administration, or the Occupational Safety and Health Administration of the Department of Labor.

§ 784.2 Obtaining consent or warrants to conduct complementary access.

(a) *Procedures for obtaining consent.* (1) For locations specified in the U.S. declaration and other locations specified by the IAEA, BIS will seek consent pursuant to IAEA complementary access requests. In instances where the owner, operator, occupant or agent in charge of a location does not consent to such complementary access, BIS will seek administrative warrants as provided by the Act.

(2) For locations specified by the IAEA where access cannot be provided, BIS may seek consent from an adjacent location pursuant to an IAEA complementary access request.

(b) *Who may give consent.* The owner, operator, occupant or agent in charge

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of a location may consent to complementary access. The individual providing consent on behalf of the location represents that he or she has the authority to make this decision.

(c) *Scope of consent.* (1) When the owner, operator, occupant, or agent in charge of a location consents to a complementary access request, he or she is agreeing to provide the IAEA Team with the same degree of access as that authorized under § 784.3 of the APR. This includes providing access for the IAEA Team and Host Team to any area of the location, any item on the location, and any records that are necessary to comply with the APR and allow the IAEA Team to accomplish the purpose of complementary access, as authorized under § 784.1(b)(1) or (b)(2) of the APR, except for the following:

(i) Information subject to the licensing jurisdiction of the Directorate of Defense Trade Controls (DDTC), U.S. Department of State, under the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120 through 130)—see § 784.3(b)(3) of the APR, which states that such access cannot be provided without prior U.S. Government authorization; and

(ii) Activities with direct national security significance to the United States, or locations or information associated with such activities.

(2) The Host Team Leader is responsible for determining whether or not the IAEA's request to obtain access to any area, building, or item, or to record or conduct the types of activities described in § 784.3 of the APR is consistent with the Additional Protocol and subsidiary arrangements to the Additional Protocol.

§ 784.3 Scope and conduct of complementary access.

(a) *General.* IAEA complementary access shall be limited to accomplishing only those purposes that are appropriate to the type of location, as indicated in § 784.1(b) of the APR and shall be conducted in the least intrusive manner, consistent with the effective and timely accomplishment of such purposes. No complementary access may take place without the presence of a U.S. Government Host Team. No information of direct national security

significance shall be provided to the IAEA during complementary access.

(b) *Scope.* This paragraph describes complementary access activities that are authorized under the APR.

(1) *Complementary access activities.* Depending on the type of location accessed, the IAEA Team may:

(i) Perform visual observation of parts or areas of the location;

(ii) Utilize radiation detection and measurement devices;

(iii) Utilize non-destructive measurements and sampling;

(iv) Examine relevant records (i.e., records appropriate for the purpose of complementary access, as authorized under § 784.1(b) of the APR), except that the following records may not be inspected unless the Host Team leader, after receiving input from representatives of the location and consulting with other members of the Host Team, determines that such access is both appropriate and necessary to achieve the relevant purpose described in § 784.1(b)(1) or (b)(2) of the APR:

(A) Financial data (other than production data);

(B) Sales and marketing data (other than shipment data);

(C) Pricing data;

(D) Personnel data;

(E) Patent data;

(F) Data maintained for compliance with environmental or occupational health and safety regulations; or

(G) Research data (unless the data are reported on Form AP-3 or AP-4);

(v) Perform location-specific environmental sampling; and

NOTE TO § 784.3(b)(1)(v): BIS will not seek access to a location for location-specific environmental sampling until the President reports to the appropriate congressional committees his determination to permit such sampling.

(vi) Utilize other objective measures which have been demonstrated to be technically feasible and the use of which have been agreed to by the United States (“objective measures,” as used herein, means any verification techniques that would be appropriate for achieving the official purpose of complementary access, both in terms of their effectiveness and limited intrusiveness).

(2) *Wide Area Environmental Sampling.*

In certain cases, IAEA inspectors may collect environmental samples (e.g., air, water, vegetation, soil, smears), at a location specified by the IAEA, for the purpose of assisting the IAEA to draw conclusions about the absence of undeclared nuclear material or nuclear activities over a wide area.

NOTE TO § 784.3(b)(2): The IAEA will not seek such access until the use of wide-area environmental sampling and the procedural arrangements therefor have been approved by its Board of Governors and consultations have been held between the IAEA and the United States. BIS will not seek access to a location for wide-area sampling until the President reports to the appropriate congressional committees his determination to permit such sampling.

(3) *ITAR-controlled technology.* ITAR-controlled technology shall not be made available to the IAEA Team without prior U.S. Government authorization. The owner, operator, occupant, or agent in charge of the location being accessed is responsible for identifying any ITAR-controlled technology at the location to the Host Team as soon as practicable following the receipt of notification from BIS of complementary access (see § 784.4(a) of the APR).

(c) *Briefing.* Following the arrival of the IAEA Team and Host Team at a location subject to complementary access, and prior to the commencement of complementary access, representatives of the organization will provide the IAEA Team and Host Team with a briefing on the environmental, health, safety, and security regulations (e.g., regulations for protection of controlled environments within the location and for personal safety) that are applicable to the location and which must be observed. In addition, the organization’s representatives may include in their briefing an overview of the location, the activities carried out at the location, and any administrative and logistical arrangements relevant to complementary access. The briefing may include the use of maps and other documentation deemed appropriate by the organization. The time spent for the briefing may not exceed one hour, and the content should be limited to that which relates to the purpose of

complementary access. The briefing may also address any of the following:

(1) Areas, buildings, and structures specific to any activities relevant to complementary access;

(2) Administrative and logistical information;

(3) Updates/revisions to reports required under the APR;

(4) Introduction of key personnel at the location;

(5) Location-specific subsidiary arrangement, if applicable; and

(6) Proposed access plan to address the purpose of complementary access.

(d) *Visual access.* The IAEA Team may visually observe areas or parts of the location, as agreed by the Host Team Leader, after the Host Team Leader has consulted with the organization's representative for the location.

(e) *Records review.* The location must be prepared to provide the IAEA Team with access to all supporting materials and documentation used by the owner, operator, occupant, or agent in charge of the location to prepare reports required under the APR and to otherwise comply with the APR (see the records inspection and recordkeeping requirements in §§ 786.1 and 786.2 of the APR and paragraph (b) of this section, which describes the scope of complementary access activities authorized under the APR) and with appropriate accommodations in which the IAEA Team can review these supporting materials and documentation. Such access will be provided in appropriate formats (e.g., paper copies, electronic remote access by computer, microfilm, or microfiche) through the Host Team to the IAEA Team during the complementary access period or as otherwise agreed upon by the IAEA Team and Host Team Leader. If the owner, operator, occupant, or agent in charge of the location does not have access to records for activities that took place under previous ownership, the previous owner must make such records available to the Host Team.

(f) *Managed access.* As necessary, the Host Team will implement managed access measures (e.g., the removal of sensitive papers from office spaces and the shrouding of sensitive displays, stores, and equipment) to prevent the

dissemination of proliferation sensitive information, to meet safety or physical protection requirements, to protect proprietary or commercially sensitive information, or to protect activities of direct national security significance to the United States, including locations or information associated with such activities. If the IAEA Team is unable to fully achieve its inspection aims under the managed access measures in place, the Host Team will make every reasonable effort to provide alternative means to allow the IAEA Team to meet these aims, consistent with the purposes of complementary access (as described in § 784.1(b) of the APR) and the requirements of this section. If a location-specific subsidiary arrangement applies (see § 784.5(b) of the APR), the Host Team shall, in consultation with the owner, operator, occupant, or agent in charge of the location, implement managed access procedures consistent with the applicable location-specific subsidiary arrangement.

(g) *Hours of complementary access.* Consistent with the provisions of the Additional Protocol, the Host Team will ensure, to the extent possible, that each complementary access is commenced, conducted, and concluded during ordinary business hours, but no complementary access shall be prohibited or otherwise disrupted from commencing, continuing or concluding during other hours.

(h) *Environmental, health, safety, and security regulations and requirements.* In carrying out their activities, the IAEA Team and Host Team shall observe federal, state, and local environmental, health, safety, and security regulations and environmental, health, safety, and security requirements established at the location, including those for the protection of controlled environments within a location and for personal safety. To the extent practicable, any such regulations and requirements that may apply to the conduct of complementary access at the location should be set forth in the location-specific subsidiary arrangement (if any).

(i) *Host Team to accompany the IAEA Team.* The Host Team shall accompany the IAEA Team, during their complementary access at the location, in

accordance with the provisions set forth in this part of the APR.

(j) *Scope of authorized communications by the IAEA Team.* (1) The United States shall permit and protect free communications between the IAEA Team and IAEA Headquarters and/or Regional Offices, including attended and unattended transmission of information generated by IAEA containment and/or surveillance or measurement devices. The IAEA Team shall have the right, through consultation with the Host Team, to make use of internationally established systems of direct communications.

(2) No document, photograph or other recorded medium, or sample relevant to complementary access may be removed or transmitted from the location by the IAEA Team without the prior consent of the Host Team.

(k) *IAEA activities, findings, and results related to complementary access.* (1) In accordance with the Additional Protocol, the IAEA shall inform the United States of:

(i) Any activities that took place in connection with complementary access to a location in the United States, including any activities concerning questions or inconsistencies that the IAEA may have brought to the attention of the United States, within 60 calendar days of the time that the activities occurred; and

(ii) The findings or results of any activities that took place, including the findings and results of activities concerning questions or inconsistencies that the IAEA may have brought to the attention of the United States, within 30 calendar days of the time that such findings or results were reached by the IAEA.

(2) BIS will provide the results of complementary access to the owner, operator, occupant, or agent in charge of the inspected location to the extent practicable.

§ 784.4 Notification, duration and frequency of complementary access.

(a) *Complementary access notification.* Complementary access will be provided only upon the issuance of a written notice by BIS to the owner, operator, occupant or agent in charge of the premises to be accessed. If BIS is unable to

provide written notification to the owner, operator, or agent in charge, BIS may post a notice prominently at the location to be accessed.

(1) *Content of notice—(i) Pertinent information furnished by the IAEA.* The notice shall include all appropriate information provided by the IAEA to the United States Government concerning:

(A) The purpose of complementary access;

(B) The basis for the selection of the location for complementary access;

(C) The activities that will be carried out during complementary access;

(D) The time and date that complementary access is expected to begin and its anticipated duration; and

(E) The names and titles of the IAEA inspectors who will participate in complementary access.

(ii) *Request for location's consent to complementary access.* The complementary access notification from BIS will request that the location inform BIS whether or not it will consent to complementary access. If a location does not agree to provide consent to complementary access within four hours of its receipt of the complementary access notification, BIS will seek an administrative warrant as provided in § 784.2(a)(1).

(iii) *Availability of advance team from BIS.* An advance team from BIS will be available to assist the location in preparing for complementary access. If the complementary access is a 24-hour 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.