Bureau of Industry and Security, Commerce

§ 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 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.
§ 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;

(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,