

SUBCHAPTER II—COMPLEMENTARY
ACCESS

§ 8121. Requirement for authority to conduct complementary access

(a) Prohibition

No complementary access to any location in the United States shall take place pursuant to the Additional Protocol without the authorization of the United States Government in accordance with the requirements of this chapter.

(b) Authority

(1) In general

Complementary access to any location in the United States subject to access under the Additional Protocol is authorized in accordance with this chapter.

(2) United States representatives

(A) Restrictions

In the event of complementary access to a privately owned or operated location, no employee of the Environmental Protection Agency or of the Mine Safety and Health Administration or the Occupational Safety and Health Administration of the Department of Labor may participate in the access.

(B) Number

The number of designated United States representatives accompanying IAEA inspectors shall be kept to the minimum necessary.

(Pub. L. 109–401, title II, §221, Dec. 18, 2006, 120 Stat. 2744.)

§ 8122. Procedures for complementary access

(a) In general

Each instance of complementary access to a location in the United States under the Additional Protocol shall be conducted in accordance with this subchapter.

(b) Notice

(1) In general

Complementary access referred to in subsection (a) may occur only upon the issuance of an actual written notice by the United States Government to the owner, operator, occupant, or agent in charge of the location to be subject to complementary access.

(2) Time of notification

The notice under paragraph (1) shall be submitted to such owner, operator, occupant, or agent as soon as possible after the United States Government has received notification that the IAEA seeks complementary access. Notices may be posted prominently at the location if the United States Government is unable to provide actual written notice to such owner, operator, occupant, or agent.

(3) Content of notice

(A)¹ In general

The notice required by paragraph (1) shall specify—

(i) the purpose for the complementary access;

(ii) the basis for the selection of the facility, site, or other location for the complementary access sought;

(iii) the activities that will be carried out during the complementary access;

(iv) the time and date that the complementary access is expected to begin, and the anticipated period covered by the complementary access; and

(v) the names and titles of the inspectors.

(4) Separate notices required

A separate notice shall be provided each time that complementary access is sought by the IAEA.

(c) Credentials

The complementary access team of the IAEA and representatives or designees of the United States Government shall display appropriate identifying credentials to the owner, operator, occupant, or agent in charge of the location before gaining entry in connection with complementary access.

(d) Scope

(1) In general

Except as provided in a warrant issued under section 8123 of this title, and subject to the rights of the United States Government under the Additional Protocol to limit complementary access, complementary access to a location pursuant to this chapter may extend to all activities specifically permitted for such locations under Article 6 of the Additional Protocol.

(2) Exception

Unless required by the Additional Protocol, no inspection under this chapter shall extend to—

(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.

(e) Environment, health, safety, and security

In carrying out their activities, members of the IAEA complementary access team and representatives or designees of the United States Government shall observe applicable environmental, health, safety, and security regulations established at the location subject to complementary access, including those for protection of controlled environments within a facility and for personal safety.

(Pub. L. 109–401, title II, §222, Dec. 18, 2006, 120 Stat. 2744.)

¹ So in original. No subpar. (B) has been enacted.

§ 8123. Consents, warrants, and complementary access

(a) In general

(1) Procedure

(A) Consent

Except as provided in paragraph (2), an appropriate official of the United States Government shall seek or have the consent of the owner, operator, occupant, or agent in charge of a location prior to entering that location in connection with complementary access pursuant to sections 8121 and 8122 of this title. The owner, operator, occupant, or agent in charge of the location may withhold consent for any reason or no reason.

(B) Administrative search warrant

In the absence of consent, the United States Government may seek an administrative search warrant from a judge of the United States under subsection (b). Proceedings regarding the issuance of an administrative search warrant shall be conducted ex parte, unless otherwise requested by the United States Government.

(2) Expedited access

For purposes of obtaining access to a location pursuant to Article 4b.(ii) of the Additional Protocol in order to satisfy United States obligations under the Additional Protocol when notice of two hours or less is required, the United States Government may gain entry to such location in connection with complementary access, to the extent such access is consistent with the Fourth Amendment to the United States Constitution, without obtaining either a warrant or consent.

(b) Administrative search warrants for complementary access

(1) Obtaining administrative search warrants

For complementary access conducted in the United States pursuant to the Additional Protocol, and for which the acquisition of a warrant is required, the United States Government shall first obtain an administrative search warrant from a judge of the United States. The United States Government shall provide to such judge all appropriate information regarding the basis for the selection of the facility, site, or other location to which complementary access is sought.

(2) Content of affidavits for administrative search warrants

A judge of the United States shall promptly issue an administrative search warrant authorizing the requested complementary access upon an affidavit submitted by the United States Government—

(A) stating that the Additional Protocol is in force;

(B) stating that the designated facility, site, or other location is subject to complementary access under the Additional Protocol;

(C) stating that the purpose of the complementary access is consistent with Article 4 of the Additional Protocol;

(D) stating that the requested complementary access is in accordance with Article 4 of the Additional Protocol;

(E) containing assurances that the scope of the IAEA's complementary access, as well as what it may collect, shall be limited to the access provided for in Article 6 of the Additional Protocol;

(F) listing the items, documents, and areas to be searched and seized;

(G) stating the earliest commencement and the anticipated duration of the complementary access period, as well as the expected times of day during which such complementary access will take place; and

(H) stating that the location to which entry in connection with complementary access is sought was selected either—

(i) because there is probable cause, on the basis of specific evidence, to believe that information required to be reported regarding a location pursuant to regulations promulgated under this chapter is incorrect or incomplete, and that the location to be accessed contains evidence regarding that violation; or

(ii) pursuant to a reasonable general administrative plan based upon specific neutral criteria.

(3) Content of warrants

A warrant issued under paragraph (2) shall specify the same matters required of an affidavit under that paragraph. In addition, each warrant shall contain the identities of the representatives of the IAEA on the complementary access team and the identities of the representatives or designees of the United States Government required to display identifying credentials under section 8122(c) of this title.

(Pub. L. 109–401, title II, §223, Dec. 18, 2006, 120 Stat. 2745.)

§ 8124. Prohibited acts relating to complementary access

It shall be unlawful for any person willfully to fail or refuse to permit, or to disrupt, delay, or otherwise impede, a complementary access authorized by this subchapter or an entry in connection with such access.

(Pub. L. 109–401, title II, §224, Dec. 18, 2006, 120 Stat. 2747.)

SUBCHAPTER III—CONFIDENTIALITY OF INFORMATION

§ 8131. Protection of confidentiality of information

Information reported to, or otherwise acquired by, the United States Government under this chapter or under the Additional Protocol shall be exempt from disclosure under section 552 of title 5.

(Pub. L. 109–401, title II, §231, Dec. 18, 2006, 120 Stat. 2747.)

SUBCHAPTER IV—ENFORCEMENT

§ 8141. Recordkeeping violations

It shall be unlawful for any person willfully to fail or refuse—