

§ 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—

(1) to establish or maintain any record required by any regulation prescribed under this chapter;

(2) to submit any report, notice, or other information to the United States Government in accordance with any regulation prescribed under this chapter; or

(3) to permit access to or copying of any record by the United States Government in accordance with any regulation prescribed under this chapter.

(Pub. L. 109-401, title II, §241, Dec. 18, 2006, 120 Stat. 2747.)

§ 8142. Penalties

(a) Civil

(1) Penalty amounts

Any person that is determined, in accordance with paragraph (2), to have violated section 8124 of this title or section 8141 of this title shall be required by order to pay a civil penalty in an amount not to exceed \$25,000 for each violation. For the purposes of this paragraph, each day during which a violation of section 8124 of this title continues shall constitute a separate violation of that section.

(2) Notice and hearing

(A) In general

Before imposing a penalty against a person under paragraph (1), the head of an executive agency designated under section 8111(a) of this title shall provide the person with notice of the order. If, within 15 days after receiving the notice, the person requests a hearing, the head of the designated executive agency shall initiate a hearing on the violation.

(B) Conduct of hearing

Any hearing so requested shall be conducted before an administrative judge. The hearing shall be conducted in accordance with the requirements of section 554 of title 5. If no hearing is so requested, the order imposed by the head of the designated agency shall constitute a final agency action.

(C) Issuance of orders

If the administrative judge determines, upon the preponderance of the evidence received, that a person named in the complaint has violated section 8124 of this title or section 8141 of this title, the administrative judge shall state the findings of fact and conclusions of law, and issue and serve on such person an order described in paragraph (1).

(D) Factors for determination of penalty amounts

In determining the amount of any civil penalty, the administrative judge or the head of the designated agency shall take into account the nature, circumstances, extent, and gravity of the violation or violations and, with respect to the violator, the ability to pay, effect on ability to continue to do business, any history of such violations, the degree of culpability, the existence of an internal compliance program, and such other matters as justice may require.

(E) Content of notice

For the purposes of this paragraph, notice shall be in writing and shall be verifiably served upon the person or persons subject to an order described in paragraph (1). In addition, the notice shall—

(i) set forth the time, date, and specific nature of the alleged violation or violations; and

(ii) specify the administrative and judicial remedies available to the person or persons subject to the order, including the availability of a hearing and subsequent appeal.

(3) Administrative appellate review

The decision and order of an administrative judge shall be the recommended decision and order and shall be referred to the head of the designated executive agency for final decision and order. If, within 60 days, the head of the designated executive agency does not modify or vacate the decision and order, it shall become a final agency action under this subsection.

(4) Judicial review

A person adversely affected by a final order may, within 30 days after the date the final order is issued, file a petition in the Court of Appeals for the District of Columbia Circuit or in the Court of Appeals for the district in which the violation occurred.

(5) Enforcement of final orders

(A) In general

If a person fails to comply with a final order issued against such person under this subsection and—

(i) the person has not filed a petition for judicial review of the order in accordance with paragraph (4), or

(ii) a court in an action brought under paragraph (4) has entered a final judgment in favor of the designated executive agency,

the head of the designated executive agency shall commence a civil action to seek compliance with the final order in any appropriate district court of the United States.

(B) No review

In any such civil action, the validity and appropriateness of the final order shall not be subject to review.

(C) Interest

Payment of penalties assessed in a final order under this section shall include interest at currently prevailing rates calculated from the date of expiration of the 60-day period referred to in paragraph (3) or the date of such final order, as the case may be.

(b) Criminal

Any person who violates section 8124 of this title or section 8141 of this title may, in addition to or in lieu of any civil penalty which may be imposed under subsection (a) for such violation, be fined under title 18, imprisoned for not more than five years, or both.

(Pub. L. 109-401, title II, §242, Dec. 18, 2006, 120 Stat. 2747.)