

graph, 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 be-

come 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.)

§ 8143. Specific enforcement

(a) Jurisdiction

The district courts of the United States shall have jurisdiction over civil actions brought by the head of an executive agency designated under section 8111(a) of this title—

- (1) to restrain any conduct in violation of section 8124 of this title or section 8141 of this title; or
- (2) to compel the taking of any action required by or under this chapter or the Additional Protocol.

(b) Civil actions

(1) In general

A civil action described in subsection (a) may be brought—

- (A) in the case of a civil action described in paragraph (1) of such subsection, in the United States district court for the judicial

district in which any act, omission, or transaction constituting a violation of section 8124 of this title or section 8141 of this title occurred or in which the defendant is found or transacts business; or

(B) in the case of a civil action described in paragraph (2) of such subsection, in the United States district court for the judicial district in which the defendant is found or transacts business.

(2) Service of process

In any such civil action, process shall be served on a defendant wherever the defendant may reside or may be found.

(Pub. L. 109–401, title II, §243, Dec. 18, 2006, 120 Stat. 2749.)

SUBCHAPTER V—ENVIRONMENTAL SAMPLING

§ 8151. Notification to Congress of IAEA Board approval of wide-area environmental sampling

(a) In general

Not later than 30 days after the date on which the Board of Governors of the IAEA approves wide-area environmental sampling for use as a safeguards verification tool, the President shall notify the appropriate congressional committees.

(b) Content

The notification under subsection (a) shall contain—

(1) a description of the specific methods and sampling techniques approved by the Board of Governors that are to be employed for purposes of wide-area sampling;

(2) a statement as to whether or not such sampling may be conducted in the United States under the Additional Protocol; and

(3) an assessment of the ability of the approved methods and sampling techniques to detect, identify, and determine the conduct, type, and nature of nuclear activities.

(Pub. L. 109–401, title II, §251, Dec. 18, 2006, 120 Stat. 2749.)

§ 8152. Application of national security exclusion to wide-area environmental sampling

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any wide-area environmental sampling proposed by the IAEA to be conducted at a specified location in the United States under Article 9 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—

(1) the proposed use of wide-area environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party;

(2) the proposed use of wide-area environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) the United States—

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving wide-area environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of wide-area environmental sampling.

(Pub. L. 109–401, title II, §252, Dec. 18, 2006, 120 Stat. 2750.)

§ 8153. Application of national security exclusion to location-specific environmental sampling

In accordance with Article 1(b) of the Additional Protocol, the United States shall not permit any location-specific environmental sampling in the United States under Article 5 of the Additional Protocol unless the President has determined and reported to the appropriate congressional committees with respect to that proposed use of environmental sampling that—

(1) the proposed use of location-specific environmental sampling is necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party;

(2) the proposed use of location-specific environmental sampling will not result in access by the IAEA to locations, activities, or information of direct national security significance; and

(3) with respect to the proposed use of environmental sampling, the United States—

(A) has been provided sufficient opportunity for consultation with the IAEA if the IAEA has requested complementary access involving location-specific environmental sampling; or

(B) has requested under Article 8 of the Additional Protocol that the IAEA engage in complementary access in the United States that involves the use of location-specific environmental sampling.

(Pub. L. 109–401, title II, §253, Dec. 18, 2006, 120 Stat. 2750.)

§ 8154. Rule of construction

As used in this subchapter, the term “necessary to increase the capability of the IAEA to detect undeclared nuclear activities in the territory of a non-nuclear-weapon State Party” shall not be construed to encompass proposed uses of environmental sampling that might assist the IAEA in detecting undeclared nuclear activities in the territory of a non-nuclear-weapon State Party by—

(1) setting a good example of cooperation in the conduct of such sampling; or

(2) facilitating the formation of a political consensus or political support for such sampling in the territory of a non-nuclear-weapon State Party.

(Pub. L. 109–401, title II, §254, Dec. 18, 2006, 120 Stat. 2751.)