

108TH CONGRESS
1ST SESSION

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To implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, known as “the Additional Protocol” signed by the United States on June 12, 1998.

IN THE SENATE OF THE UNITED STATES

DECEMBER 9, 2003

Mr. LUGAR introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

A BILL

To implement the obligations of the United States under the Protocol Additional to the Agreement between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America, known as “the Additional Protocol” signed by the United States on June 12, 1998.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This division may be cited as the “Additional Pro-
5 tocol to the U.S.–IAEA Safeguards Agreement Implemen-
6 tation Act of 200–”.

1 **SEC. 2. TABLE OF CONTENTS.**

2 The table of contents for this Act is as follows:

- 3 Sec. 1. Short title.
- 4 Sec. 2. Table of contents.
- 5 Sec. 3. Congressional findings.
- 6 Sec. 4. Definitions.
- 7 Sec. 5. Severability.

TITLE I—GENERAL PROVISIONS

8 Sec. 101. Authorization.

TITLE II—COMPLEMENTARY ACCESS

- 9 Sec. 201. Authority to conduct complementary access.
- 10 Sec. 202. Procedures for complementary access.
- 11 Sec. 203. Consents, warrants and warrantless complementary access.

TITLE III—CONFIDENTIALITY OF INFORMATION

12 Sec. 301. Restrictions on disclosure.

TITLE IV—RECORDKEEPING

Sec. 401. Violations.

TITLE V—ENFORCEMENT

- Sec. 501. Penalties.
- Sec. 502. Specific enforcement.

TITLE VI—AUTHORIZATION OF FUNDS

Sec. 601. Authorization.

3 **SEC. 3. CONGRESSIONAL FINDINGS.**

4 CONGRESSIONAL DECLARATION OF POLICY

5 The Congress finds—

6 (1) that the proliferation of nuclear weapons or
 7 other nuclear explosive devices poses a grave threat
 8 to the security interests of the United States;

9 (2) that the 1968 Treaty on the Non-Prolifera-
 10 tion of Nuclear Weapons (NPT) has proven critical
 11 to limiting such proliferation, and remains the best
 12 means for preventing the spread of nuclear weapons

1 or other nuclear explosive devices to additional coun-
2 tries;

3 (3) that for the NPT to be effective, each of its
4 non-nuclear-weapon State Parties must conclude a
5 comprehensive safeguards agreement with the Inter-
6 national Atomic Energy Agency (the “IAEA”);

7 (4) that recent events emphasize the urgency of
8 strengthening the effectiveness and improving the ef-
9 ficiency of the safeguards system. This can best be
10 accomplished by providing IAEA inspectors with
11 more information about and broader (complemen-
12 tary) access to nuclear activities within the territory
13 of non-nuclear-weapon State NPT parties;

14 (5) that the proposed scope of such expanded
15 information and complementary access has been ne-
16 gotiated by the member states of the IAEA in the
17 form of a Model Additional Protocol to existing safe-
18 guards agreements and that universal acceptance of
19 Additional Protocols is essential to enhancing the ef-
20 fectiveness of the NPT;

21 (6) that the United States, as a nuclear-weapon
22 State Party to the NPT, signed the Protocol Addi-
23 tional to the Agreement between the United States
24 of America and the International Atomic Energy
25 Agency for the Application of Safeguards in the

1 United States of America, which contains measures
2 that protect its right to determine and exclude IAEA
3 access to activities with direct national security sig-
4 nificance or to locations or information associated
5 with such activities and to protect proprietary and
6 commercially sensitive information; and

7 (7) that implementation of this Additional Pro-
8 tocol in the United States in a manner consistent
9 with its obligations under the NPT will strongly en-
10 courage other Parties, especially non-nuclear-weapon
11 State Parties, to conclude Additional Protocols and
12 thereby strengthen the NPT safeguards system and
13 reduce the threat of nuclear proliferation, which is
14 of direct and substantial benefit to the United
15 States.

16 **SEC. 4. DEFINITIONS.**

17 In this Act:

18 (1) **ADDITIONAL PROTOCOL.**—The term “Addi-
19 tional Protocol” means the Protocol Additional to
20 the Agreement between the United States of Amer-
21 ica and the International Atomic Energy Agency for
22 the Application of Safeguards in the United States
23 of America, which was signed by both parties in Vi-
24 enna on June 12, 1998.

1 (2) IAEA.—The term “IAEA” means the
2 International Atomic Energy Agency.

3 (3) COMPLEMENTARY ACCESS.—The term
4 “complementary access” means the IAEA’s access
5 rights as set forth in the Additional Protocol.

6 (4) FACILITY.—The term “facility” has the
7 meaning set forth in article 18 of the Additional
8 Protocol.

9 (5) JUDGE OF THE UNITED STATES.—The term
10 “judge of the United States” means a judge or mag-
11 istrate judge of a district court of the United States.

12 (6) PERSON.—The term “person”, except as
13 otherwise provided, means any individual, corpora-
14 tion, partnership, firm, association, trust, estate,
15 public or private institution, any State or any polit-
16 ical subdivision thereof, or any political entity within
17 a State, any foreign government or nation or any
18 agency, instrumentality or political subdivision of
19 any such government or nation, or other entity lo-
20 cated in the United States.

21 (7) SAFEGUARDS AGREEMENT.—The term
22 “Safeguards Agreement” means the Agreement be-
23 tween the United States of America and the Inter-
24 national Atomic Energy Agency for the Application

1 of Safeguards in the United States of America,
2 which entered into force in December 9, 1980.

3 (8) SITE.—The term “site” has the meaning
4 set forth in article 18 of the Additional Protocol.

5 (9) UNITED STATES.—The term “United
6 States” means the several States of the United
7 States, the District of Columbia, and the common-
8 wealths, territories, and possessions of the United
9 States and includes all places under the jurisdiction
10 or control of the United States, including—

11 (A) any of the places within the provisions
12 of paragraph (41) of section 40102 of title 49,
13 United States Code;

14 (B) any civil aircraft of the United States
15 or public aircraft, as such terms are defined in
16 paragraphs (17) and (37), respectively, of sec-
17 tion 40102 of title 49, United States Code; and

18 (C) any vessel of the United States, as
19 such term is defined in section 3(b) of the Ma-
20 rine Drug Enforcement Act, as amended (sec-
21 tion 1903(b) of title 46, United States Code
22 App.).

23 (10) LOCATION.—The term “location” means
24 any geographic point or area declared by the United

1 States or specified by the International Atomic En-
2 ergy Agency.

3 **SEC. 5. SEVERABILITY.**

4 If any provision of this Act, or the application of such
5 provision to any person or circumstance, is held invalid,
6 the remainder of this Act, or the application of such provi-
7 sion to persons or circumstances other than those as to
8 which it is held invalid, shall not be affected thereby.

9 **TITLE I—GENERAL PROVISIONS**

10 **SEC. 101. AUTHORIZATION.**

11 (a) AUTHORIZATION.—The President is authorized to
12 implement and carry out the provisions of this Act and
13 the Additional Protocol and shall designate through Exec-
14 utive Order which agencies of the United States, which
15 may include but are not limited to the Department of
16 State, the Department of Defense, the Department of Jus-
17 tice, the Department of Commerce, the Department of En-
18 ergy, and the Nuclear Regulatory Commission, shall issue,
19 amend, or revise and enforce regulations in order to imple-
20 ment this Act and the provisions of the Additional Pro-
21 tocol.

1 **TITLE II—COMPLEMENTARY**
2 **ACCESS**

3 **SEC. 201. AUTHORITY TO CONDUCT COMPLEMENTARY AC-**
4 **CESS.**

5 (a) PROHIBITION.—No complementary access to any
6 location in the United States shall take place pursuant to
7 the Additional Protocol without the authorization of the
8 United States Government in accordance with the require-
9 ments of this Act.

10 (b) AUTHORITY.—

11 (1) Complementary access to any location in
12 the United States subject to access under the Addi-
13 tional Protocol is authorized in accordance with this
14 Act.

15 (2) UNITED STATES REPRESENTATIVE.—

16 (A) In the event of complementary access
17 to a privately owned or operated location, no
18 employee of the Environmental Protection
19 Agency, the Mine Safety and Health Adminis-
20 tration, or the Occupational Safety and Health
21 Administration may participate in the access.

22 (B) The number of duly designated rep-
23 resentatives shall be kept to the minimum nec-
24 essary.

1 **SEC. 202. PROCEDURES FOR COMPLEMENTARY ACCESS.**

2 (a) IN GENERAL.—Each instance of complementary
3 access to a location in the United States under the Addi-
4 tional Protocol shall be conducted in accordance with this
5 section and sections 201 and 203.

6 (b) NOTICE.—

7 (1) IN GENERAL.—Complementary access re-
8 ferred to in subsection (a) may occur only upon
9 issuance of an actual written notice by the United
10 States Government to the owner, operator, occupant,
11 or agent in charge of the location to be subject to
12 complementary access.

13 (2) TIME OF NOTIFICATION.—The notice shall
14 be submitted to the owner, operator, occupant, or
15 agent in charge as soon as possible after the United
16 States Government has received notification that the
17 IAEA seeks complementary access. Notices may be
18 posted prominently at the location if the United
19 States Government is unable to provide actual writ-
20 ten notice to the owner, operator, occupant, or agent
21 in charge of the premises.

22 (3) CONTENT OF NOTICE.—

23 (A) IN GENERAL.—The notice under para-
24 graph (1) shall include all appropriate informa-
25 tion supplied by the IAEA to the Department
26 of State concerning—

1 (i) the purpose for the complementary
2 access;

3 (ii) the basis for the selection of the
4 facility, site or other location for the com-
5plementary access sought;

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

8 (iv) the time and date that the com-
9plementary access will begin, and the an-
10ticipated period covered by the complemen-
11tary access; and

12 (v) the names and titles of the inspec-
13tors.

14 (4) SEPARATE NOTICES REQUIRED.—A sepa-
15rate notice shall be provided each time that com-
16plementary access is sought by the IAEA.

17 (c) CREDENTIALS.—The complementary access team
18 of the IAEA and representatives of the United States Gov-
19ernment or designees of the United States Government
20 shall display appropriate identifying credentials to the
21 owner, operator, occupant, or agent in charge of the loca-
22tion before gaining complementary access.

23 (d) SCOPE.—

24 (1) IN GENERAL.—Except as provided in a war-
25rant issued under section 203, and subject to the

1 United States Government's rights under the Addi-
2 tional Protocol to limit complementary access, com-
3plementary access to a location pursuant to this title
4 may extend to all activities specifically permitted for
5 such locations by article 6 of the Additional Pro-
6 tocol.

7 (2) EXCEPTION.—Unless required by the Addi-
8 tional Protocol, no inspection under this title shall
9 extend to—

10 (A) financial data;

11 (B) sales and marketing data (other than
12 shipment data);

13 (C) pricing data;

14 (D) personnel data;

15 (E) patent data;

16 (F) data maintained for compliance with
17 environmental or occupational health and safety
18 regulations; or

19 (G) research data.

20 (e) ENVIRONMENT, HEALTH, SAFETY, AND SECUR-
21 ITY.—

22 (1) COMPLIANCE WITH REGULATIONS.—In car-
23 rying out their activities, members of the IAEA com-
24plementary access team and representatives of the
25 United States Government or designees of the

1 United States Government shall observe applicable
2 environmental, health, safety, and security regula-
3 tions established at the location subject to com-
4plementary access, including those for protection of
5 controlled environments within a facility and for per-
6sonal safety.

7 **SEC. 203. CONSENTS, WARRANTS AND WARRANTLESS COM-**
8 **PLEMENTARY ACCESS.**

9 (a) IN GENERAL.—

10 (1) Where a warrant would otherwise be re-
11quired, the United States Government shall seek the
12 consent of the owner or the operator, occupant, or
13 agent in charge of the location prior to gaining com-
14plementary access to that location pursuant to sec-
15 tions 201 and 202. If consent is obtained, no
16 warrant is required for such complementary access.
17 The owner or the operator, occupant, or agent in
18 charge of the location may withhold consent for any
19 reason or no reason. If consent is withheld, the
20 United States Government may seek an administra-
21 tive search warrant from a judge of the United
22 States pursuant to subsection (b). Proceedings re-
23 garding the issuance of an administrative search
24 warrant shall be conducted ex parte, unless other-
25 wise requested by the United States Government.

1 (2) Nothing in this Act shall be construed to re-
2 quire the United States Government to obtain a
3 warrant to gain complementary access in any situa-
4 tion in which the Fourth Amendment would not oth-
5 erwise require a warrant.

6 (b) ADMINISTRATIVE SEARCH WARRANTS FOR COM-
7 PLEMENTARY ACCESS.—

8 (1) OBTAINING ADMINISTRATIVE SEARCH WAR-
9 RANTS.—For complementary access conducted on
10 the territory of the United States pursuant to the
11 Additional Protocol, and for which the acquisition of
12 a warrant is required, the United States Government
13 shall first obtain an administrative search warrant
14 from a judge of the United States. The United
15 States Government shall provide to the judge of the
16 United States all appropriate information supplied
17 by the IAEA to the Department of State regarding
18 the basis for the selection of the facility, site or
19 other location to which complementary access is
20 sought. The United States Government shall also
21 provide any other appropriate information available
22 to it relating to the reasonableness of the selection
23 of the facility, site or other location.

24 (2) CONTENT OF AFFIDAVITS FOR ADMINISTRA-
25 TIVE SEARCH WARRANTS.—The judge of the United

1 States shall promptly issue an administrative search
2 warrant authorizing the requested complementary
3 access upon an affidavit submitted by the United
4 States Government showing—

5 (A) that the Additional Protocol is in
6 force;

7 (B) that the designated facility, site or
8 other location is subject to complementary ac-
9 cess under the Additional Protocol;

10 (C) that the purpose of IAEA complemen-
11 tary access is to verify the correctness and com-
12 pleteness of information declared by the United
13 States Government pursuant to article 2 of the
14 Additional Protocol;

15 (D) that complementary access is in ac-
16 cordance with article 4 of the Additional Pro-
17 tocol;

18 (E) that the scope of the IAEA's com-
19 plementary access, as well as what it may col-
20 lect, shall be limited to that listed in article 6
21 of the Additional Protocol;

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

24 (G) the earliest commencement and the an-
25 ticipated duration of the complementary access

1 period, as well as the expected times of day
2 during which such complementary access will
3 take place; and

4 (H) that the location to which complemen-
5 tary access is sought was selected either (i) be-
6 cause there is probable cause, on the basis of
7 specific evidence, to believe that information re-
8 quired to be reported regarding a location pur-
9 suant to regulations promulgated under the Act
10 is incorrect or incomplete, and that the location
11 to be accessed contains evidence regarding that
12 violation; or (ii) pursuant to a reasonable gen-
13 eral administrative plan based upon specific
14 neutral criteria.

15 (3) CONTENT OF WARRANTS.—A warrant
16 issued under paragraph (2) shall specify the same
17 matters required of an affidavit under that para-
18 graph. In addition to the requirements for a warrant
19 issued under this paragraph, each warrant shall con-
20 tain, if known, the identities of the representatives
21 of the IAEA on the complementary access team and
22 the identities of the representatives of the United
23 States Government or designees of the United States
24 Government required to display identifying creden-
25 tials under paragraph 202(c) of this Act.

1 **TITLE III—CONFIDENTIALITY OF**
2 **INFORMATION**

3 **SEC. 301. RESTRICTIONS ON DISCLOSURE.**

4 (a) PROTECTION OF CONFIDENTIALITY OF INFORMA-
5 TION.—Information reported to, or otherwise acquired by,
6 the United States Government under this Act or under
7 the Additional Protocol shall be exempt from disclosure
8 under sections 552 and 552a of title 5, United States
9 Code.

10 (b) CONTRACTOR PERSONNEL.—Contractor per-
11 sonnel shall not disclose information acquired in connec-
12 tion with aid they provide in the execution of complemen-
13 tary access.

14 **TITLE IV—RECORDKEEPING**

15 **SEC. 401. VIOLATIONS.**

16 (a) It shall be unlawful for any person willfully to
17 fail or refuse—

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

20 (2) to submit any report, notice or other infor-
21 mation to the United States Government in accord-
22 ance with any regulation prescribed under this Act;

23 or

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

4 **TITLE V—ENFORCEMENT**

5 **SEC. 501. PENALTIES.**

6 (a) CIVIL.—

7 (1) PENALTY AMOUNTS.—

8 (A) RECORDKEEPING VIOLATIONS.—Any
9 person that is determined, in accordance with
10 paragraph (2), to have violated title IV of this
11 Act shall be required by order to pay a civil
12 penalty in an amount not to exceed \$25,000 for
13 each violation.

14 (2) AGENCY ORDERS.—Each agency described
15 in section 101 may issue an order, including a final
16 order, to enforce its regulations issued pursuant to
17 that section.

18 (3) JUDICIAL REVIEW.—A person adversely af-
19 fected by a final order issued pursuant to paragraph
20 (2) may, within 30 days after the date the final
21 order is issued, file a petition in the Court of Ap-
22 peals for the District of Columbia Circuit or any
23 other circuit in which the person resides or transacts
24 business.

1 (4) ENFORCEMENT OF ORDERS.—If a person
2 fails to comply with a final order issued under para-
3 graph (2) and—

4 (A) the time has elapsed for filing a peti-
5 tion for judicial review under paragraph (3) and
6 no petition has been filed, or

7 (B) a court in an action for judicial review
8 brought under paragraph (3) has entered a
9 final judgment in favor of the agency,
10 the Attorney General, at the request of such agency,
11 shall file a suit to seek compliance with the order in
12 any appropriate district court of the United States,
13 plus interest at currently prevailing rates calculated
14 from the date of expiration of the 30-day period re-
15 ferred to in paragraph (3) or the date of such final
16 judgment, as the case may be. In any such suit, the
17 validity and appropriateness of the final order shall
18 not be subject to review.

19 (b) CRIMINAL.—Any person that violates any provi-
20 sion of title IV of this Act shall, in addition to or in lieu
21 of any civil penalty which may be imposed under sub-
22 section (a) for such violation, be fined under title 18,
23 United States Code, imprisoned for not more than five
24 years, or both.

1 **SEC. 502. SPECIFIC ENFORCEMENT.**

2 (a) JURISDICTION.—The district courts of the United
3 States Government shall have jurisdiction over civil ac-
4 tions brought by the Attorney General to—

5 (1) restrain any violation of title IV of this Act;

6 and

7 (2) compel the taking of any action required by
8 or under this Act or the Additional Protocol.

9 (b) CIVIL ACTIONS.—

10 (1) IN GENERAL.—A civil action described in
11 subsection (a) may be brought—

12 (A) in the case of a civil action described
13 in subsection (a)(1), in the United States dis-
14 trict court for the judicial district in which any
15 act, omission, or transaction constituting a vio-
16 lation of title IV occurred or in which the de-
17 fendant is found or transacts business; or

18 (B) in the case of a civil action described
19 in subsection (a)(2), in the United States dis-
20 trict court for the judicial district in which the
21 defendant is found or transacts business.

22 (2) SERVICE OF PROCESS.—In any such civil
23 action, process shall be served on a defendant wher-
24 ever the defendant may reside or may be found.

1 **TITLE VI—AUTHORIZATION OF**
2 **FUNDS**

3 **SEC. 601. AUTHORIZATION.**

4 There are authorized to be appropriated such sums
5 as may be necessary to carry out the purposes of this Act.

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