

ON-SITE PROTOCOLS FOR COOPERATION WITH FEDERAL AGENTS CONDUCTING A SEARCH

Things to do now:

1. Designate one person or position at Company site(s) to handle communications with federal agents
2. Confirm Company employment records comply with I-9 and paperwork is in order

When federal agents appear on site:

3. Immediately notify the Company manager if any federal agents appear. **ONLY** the manager has authority to speak with the agents. Direct agents to designated Company representative.
4. Remain calm and friendly.
5. Ask for any court orders or warrants, take a picture and send to appropriate leadership. Review warrants for the following information:
 - (a) Does the address on the document match the address of the site?
 - (b) Is the order or warrant signed?
 - (c) Does the document specify when the search may take place?
 - (e) Does the document say whether the agents may search for people or things?
 - (f) Does the document state what the federal agents are authorized to seize?
 - (g) Is the document an actual judicial warrant, signed by a judge, or is it merely on agency letterhead and titled an Administrative Warrant? Authority to enter the premises and conduct a search must be from a judicial warrant.

If the order or warrant appears defective, advise Company management.

6. Video all interactions. You have a right to record them, but **DO NOT** continue if they demand you stop filming.

7. If the federal agents make demands, which you believe are unreasonable or illegal, you may question them about it, but do not put yourself in jeopardy by ultimately refusing to cooperate.
8. If federal agents confiscate items, documents, mobile phones, etc., make an inventory of all items and ask for a receipt.
9. Contact the local police to explain ICE is on site. (Some local jurisdictions, such as Denver, want to track ICE operations within their boundaries and share that information the Colorado Attorney General.)
10. Do not speak with the media.

TIERS OF RISK IN ASSESSING COMPLIANCE POLICY

Before making any policy decisions about how much or little your entity wishes to cooperate with federal agents, please consider the follow risk factors:

1 – Criminal. Any individual or entity refusing to cooperate with federal agents may be at risk for criminal charges, including obstruction of justice. Even if you are refusing to cooperate with an illegal order, and the courts ultimately agree with you, the criminal process may be grueling and costly.

2 – Regulatory. If individuals or the entities hold any federal licenses, the administration may seek to suspend or revoke those licenses. For example, a physician refusing to divulge staff or patient information may lose their DEA license allowing them to prescribe medicine. A nonprofit refusing to allow entry to its facility may lose its 501C status.

3 – Civil. Any individual with a government contract or grant, may have them terminated for failing to cooperate with a federal search warrant.

Due process rights attach to each of these tiers of risk. Criminal defendants have the most protections. Licenses are property rights, requiring notice and a hearing, but not all the protections of criminal defendants. Loss of a federal contract or grant offers only civil protections, such as the possibility for a breach of contract suit and/or challenging the legality of the termination.

For more information, please feel free to contact Tom Downey, tdowney@irelandstapleton.com

Ireland Stapleton Pryor and Pascoe, PC is a 99-year old full-service law firm with offices in Denver, Grand Junction and Fort Collins.