

information, subjects, or activities, except on behalf of the United States or a party represented by the Department of Justice. Upon a showing by the requestor of exceptional need or unique circumstances and that the anticipated testimony will not be adverse to the interests of the Department of Defense or the United States, the appropriate DoD official designated in paragraph (a) of this section may, in writing, grant special authorization for DoD personnel to appear and testify at no expense to the United States. If, despite the final determination of the responsible DoD official, a court of competent jurisdiction or other appropriate authority, orders the appearance and expert or opinion testimony of DoD personnel, the personnel shall notify the responsible DoD official of such order. If the DoD official determines that no further legal review of or challenge to the court's order will be sought, the affected DoD personnel shall comply with the order. If directed by the appropriate DoD official, however, the affected DoD personnel shall respectfully decline to comply with the demand. *See United States ex rel. Touhy v. Ragen*, 340 U.S. 462 (1951).

PART 99—PROCEDURES FOR STATES AND LOCALITIES TO REQUEST INDEMNIFICATION

Sec.

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APPENDIX TO PART 99—ADDRESSES OF RELEVANT U.S. GOVERNMENT AGENCIES

AUTHORITY: Access to Criminal History Records for National Security Purposes, of The Intelligence Authorization Act for Fiscal Year 1986, Pub. L. No. 99-169, secs. 801-803, 99 Stat. 1002, 1008-1011 (1985) (codified in part at 5 U.S.C. 9101).

SOURCE: 51 FR 42555, Nov. 25, 1986, unless otherwise noted.

§99.1 Scope and purpose.

(a) The Department of Defense (DoD), Office of Personnel Management (OPM), or Central Intelligence Agency (CIA) has the right to criminal history

information of States and local criminal justice agencies in order to determine whether a person may:

(1) Be eligible for access to classified information;

(2) Be assigned to sensitive national security duties; or

(3) Continue to be assigned to national security duties.

(b) This part sets out the conditions under which the DoD, OPM, or CIA may sign an agreement to indemnify and hold harmless a State or locality against claims for damages, costs, and other monetary loss caused by disclosure or use of criminal history record information by one of these agencies.

(c) The procedures set forth in this part do not apply to situations where a Federal agency seeks access to the criminal history records of another Federal agency.

(d) By law these provisions implementing 5 U.S.C. 9101 (b)(3) shall expire December 4, 1988, unless the duration of said section is extended or limited by Congress.

§99.3 General definitions.

For the purposes of §§99.1 through 99.9 of this part:

Criminal history record information: information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, information, or other formal criminal charges and any disposition arising therefrom, sentencing, correction supervision, and release. The term does not include identification information such as fingerprint records to the extent that such information does not indicate involvement of the individual in the criminal justice system. The term does not include those records of a State or locality sealed pursuant to law from access by State and local criminal justice agencies of that State or locality.

Criminal justice agency: Federal, State, and local agencies including (a) courts, or (b) a government agency or any subunit thereof which performs the administration of criminal justice pursuant to a statute or executive order, and which allocates a substantial part of its annual budget to the administration of criminal justice.