

States, as well as their family members who accompany them, who have been charged with, or convicted of, a felony in a court, have been held in contempt by a court for failure to obey the court's order, or have been ordered to show cause why they should not be held in contempt for failing to obey the court's order.

(b) This part does not affect the authority of DoD Components to cooperate with courts and State and local officials in enforcing orders against DoD members and employees outside the United States on matters not listed in paragraph (a) of this section.

(c) This part does not create any rights or remedies and may not be relied on by any person, organization, or other entity to allege a denial of such rights or remedies.

§ 146.5 Responsibilities.

(a) The *General Counsel of the Department of Defense* (GC, DoD) shall:

(1) Issue Instructions and other guidance, as necessary, to implement this part.

(2) Review and approve the implementing documents issued by DoD Components under this part.

(3) Coordinate on requests for exception to the requirements of this part under § 146.5(b).

(b) The *Assistant Secretary of Defense (Force Management and Personnel)* (ASD(FM&P)), with the concurrence of the GC, DoD, shall grant exceptions on a case-by-case basis to the requirements of § 146.6. In exercising this authority, the ASD(FM&P), on request by the DoD Component concerned, shall give due consideration to the pertinent mission requirements, readiness, discipline, and ongoing DoD investigations and courts-martial.

(c) The *Heads of DoD Components* shall:

(1) Comply with this part.

(2) Issue Regulations implementing this part.

(3) Report promptly to the ASD(FM&P) and GC, DoD, any action taken under paragraphs (a) (1) and (2) of § 146.6.

§ 146.6 Procedures.

(a) On receipt of a request for assistance from a court, or a Federal, State,

or local official concerning a court order described in § 146.4(a), the Head of the DoD Component concerned, or designee, shall determine whether the request is based on an order issued by a court of competent jurisdiction. Attempts shall be made to resolve the matter to the satisfaction of the court without the return of, or other action affecting, the member, employee, or family member (subject). Before action is taken under this section, the subject shall be afforded the opportunity to provide evidence of legal efforts to resist the court order, or otherwise show legitimate cause for noncompliance. If the Head of the DoD Component concerned determines that such efforts warrant a delay in taking action under this section, the DoD Component Head may grant a brief delay (not more than 90 days). All delays promptly shall be reported to the ASD(FM&P) and to the GC, DoD.

(1) If the request pertains to a felony or to contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of a court or the custody of a parent or another person awarded custody by court order, and the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, unless the ASD(FM&P), or designee, grants an exception.

(2) If the request does not pertain to a felony or contempt involving the unlawful or contemptuous removal of a child from the jurisdiction of the court or the custody of a parent or another person awarded custody by court order, and if the matter cannot be resolved with the court without the return of the subject to the United States, the Head of the DoD Component, or designee, promptly shall take the action prescribed in paragraphs (b) through (d) of this section, when deemed appropriate with the facts and circumstances of each particular case, following consultation with legal staff.

(b) If a DoD member is the subject of the request, the member shall be ordered, under 10 U.S.C. 814, to return expeditiously to an appropriate port of

entry at Government expense, contingent on the party requesting return of the member providing for transportation, and escort, if desired, of the member from such port of entry to the jurisdiction of the party. The party requesting return of the member shall be notified at least 10 days before the member's return to the selected port of entry, absent unusual circumstances.

(c) If a DoD employee is the subject of the request concerning the court order, the employee strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawal of command sponsorship and may be the basis for adverse action against the DoD employee, to include removal from the Federal Service. Proposals to take such adverse action must be approved by the Head of the DoD Component concerned, or designee. Such proposals shall be coordinated with the cognizant civilian personnel office and legal counsel.

(d) If the family member of a DoD member or employee is the subject of a request concerning the court order, the family member strongly shall be encouraged to comply with the court order. Failure to respond to the court order may be a basis for withdrawing the command sponsorship of the family member.

[54 FR 298, Jan. 5, 1989, as amended at 55 FR 34555, Aug. 23, 1990]

PART 147—ADJUDICATIVE GUIDELINES FOR DETERMINING ELIGIBILITY FOR ACCESS TO CLASSIFIED INFORMATION

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AUTHORITY: E.O. 12968 (60 FR 40245, 3 CFR 1995 Comp., p 391).

SOURCE: 63 FR 4573, Jan. 30, 1998, unless otherwise noted.

Subpart A—Adjudication

§147.1 Introduction.

The following adjudicative guidelines are established for all United States Government civilian and military personnel, consultants, contractors, employees of contractors, licensees, certificate holders or grantees and their employees and other individuals who require access to classified information. They apply to persons being considered for initial or continued eligibility for access to classified information, to include sensitive compartmented information and special access programs and are to be used by government departments and agencies in all final clearance determinations.