

PRIOR PROVISIONS

A prior section 949o, added Pub. L. 109-366, §3(a)(1), Oct. 17, 2006, 120 Stat. 2617, related to record of trial, prior to the general amendment of this chapter by Pub. L. 111-84.

SUBCHAPTER V—CLASSIFIED INFORMATION PROCEDURES

- Sec.
- 949p-1. Protection of classified information: applicability of subchapter.
- 949p-2. Pretrial conference.
- 949p-3. Protective orders.
- 949p-4. Discovery of, and access to, classified information by the accused.
- 949p-5. Notice by accused of intention to disclose classified information.
- 949p-6. Procedure for cases involving classified information.
- 949p-7. Introduction of classified information into evidence.

§ 949p-1. Protection of classified information: applicability of subchapter

(a) PROTECTION OF CLASSIFIED INFORMATION.—Classified information shall be protected and is privileged from disclosure if disclosure would be detrimental to the national security. Under no circumstances may a military judge order the release of classified information to any person not authorized to receive such information.

(b) ACCESS TO EVIDENCE.—Any information admitted into evidence pursuant to any rule, procedure, or order by the military judge shall be provided to the accused.

(c) DECLASSIFICATION.—Trial counsel shall work with the original classification authorities for evidence that may be used at trial to ensure that such evidence is declassified to the maximum extent possible, consistent with the requirements of national security. A decision not to declassify evidence under this section shall not be subject to review by a military commission or upon appeal.

(d) CONSTRUCTION OF PROVISIONS.—The judicial construction of the Classified Information Procedures Act (18 U.S.C. App.) shall be authoritative in the interpretation of this subchapter, except to the extent that such construction is inconsistent with the specific requirements of this chapter.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2590.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (d), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p-2. Pretrial conference

(a) MOTION.—At any time after service of charges, any party may move for a pretrial conference to consider matters relating to classified information that may arise in connection with the prosecution.

(b) CONFERENCE.—Following a motion under subsection (a), or sua sponte, the military judge shall promptly hold a pretrial conference. Upon request by either party, the court shall hold such conference ex parte to the extent necessary

to protect classified information from disclosure, in accordance with the practice of the Federal courts under the Classified Information Procedures Act (18 U.S.C. App.).

(c) MATTERS TO BE ESTABLISHED AT PRETRIAL CONFERENCE.—

(1) TIMING OF SUBSEQUENT ACTIONS.—At the pretrial conference, the military judge shall establish the timing of—

- (A) requests for discovery;
- (B) the provision of notice required by section 949p-5 of this title; and
- (C) the initiation of the procedure established by section 949p-6 of this title.

(2) OTHER MATTERS.—At the pretrial conference, the military judge may also consider any matter—

- (A) which relates to classified information; or
- (B) which may promote a fair and expeditious trial.

(d) EFFECT OF ADMISSIONS BY ACCUSED AT PRETRIAL CONFERENCE.—No admission made by the accused or by any counsel for the accused at a pretrial conference under this section may be used against the accused unless the admission is in writing and is signed by the accused and by the counsel for the accused.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

REFERENCES IN TEXT

The Classified Information Procedures Act, referred to in subsec. (b), is Pub. L. 96-456, Oct. 15, 1980, 94 Stat. 2025, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 949p-3. Protective orders

Upon motion of the trial counsel, the military judge shall issue an order to protect against the disclosure of any classified information that has been disclosed by the United States to any accused in any military commission under this chapter or that has otherwise been provided to, or obtained by, any such accused in any such military commission.

(Added Pub. L. 111-84, div. A, title XVIII, §1802, Oct. 28, 2009, 123 Stat. 2591.)

§ 949p-4. Discovery of, and access to, classified information by the accused

(a) LIMITATIONS ON DISCOVERY OR ACCESS BY THE ACCUSED.—

(1) DECLARATIONS BY THE UNITED STATES OF DAMAGE TO NATIONAL SECURITY.—In any case before a military commission in which the United States seeks to delete, withhold, or otherwise obtain other relief with respect to the discovery of or access to any classified information, the trial counsel shall submit a declaration invoking the United States' classified information privilege and setting forth the damage to the national security that the discovery of or access to such information reasonably could be expected to cause. The declaration shall be signed by a knowledgeable United States official possessing authority to classify information.

(2) STANDARD FOR AUTHORIZATION OF DISCOVERY OR ACCESS.—Upon the submission of a dec-