

Subpart H—Access to Criminal History Record Information

CHAPTER 91—ACCESS TO CRIMINAL HISTORY RECORDS FOR NATIONAL SECURITY AND OTHER PURPOSES

Sec.
9101. Access to criminal history records for national security and other purposes.

AMENDMENTS

2000—Pub. L. 106-398, §1 [[div. A], title X, §1076(f)(1)(A), (2)(B)], Oct. 30, 2000, 114 Stat. 1654, 1654A-282, substituted “AND OTHER PURPOSES” for “PURPOSES” in chapter heading and “Access to criminal history records for national security and other purposes” for “Criminal history record information for national security purposes” in item 9101.

§ 9101. Access to criminal history records for national security and other purposes

(a) As used in this section:

(1) The term “criminal justice agency” means (A) any Federal, State, or local court, and (B) any Federal, State, or local 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.

(2) The term “criminal history record information” means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, indictments, informations, 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 includes those records of a State or locality sealed pursuant to law if such records are accessible by State and local criminal justice agencies for the purpose of conducting background checks.

(3) The term “classified information” means information or material designated pursuant to the provisions of a statute or Executive order as requiring protection against unauthorized disclosure for reasons of national security.

(4) The term “State” means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, Guam, the Virgin Islands, American Samoa, and any other territory or possession of the United States.

(5) The term “local” and “locality” means any local government authority or agency or component thereof within a State having jurisdiction over matters at a county, municipal, or other local government level.

(6) The term “covered agency” means any of the following:

- (A) The Department of Defense.
- (B) The Department of State.
- (C) The Department of Transportation.
- (D) The Office of Personnel Management.

(E) The Central Intelligence Agency.
(F) The Federal Bureau of Investigation.
(G) The Department of Homeland Security.

(H) The Office of the Director of National Intelligence.

(I) An Executive agency that—

- (i) is authorized to conduct background investigations under a Federal statute; or
- (ii) is delegated authority to conduct background investigations in accordance with procedures established by the Security Executive Agent or the Suitability Executive Agent under subsection (b) or (c)(iv) of section 2.3 of Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto.

(J) A contractor that conducts a background investigation on behalf of an agency described in subparagraphs (A) through (I).

(7) The terms “Security Executive Agent” and “Suitability Executive Agent” mean the Security Executive Agent and the Suitability Executive Agent, respectively, established under Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto.

(b)(1) Upon request by a covered agency, criminal justice agencies shall make available all criminal history record information regarding individuals under investigation by that covered agency, in accordance with Federal Investigative Standards jointly promulgated by the Suitability Executive Agent and Security Executive Agent, for the purpose of—

(A) determining eligibility for—

- (i) access to classified information;
- (ii) assignment to or retention in sensitive national security duties or positions;
- (iii) acceptance or retention in the armed forces; or
- (iv) appointment, retention, or assignment to a position of public trust while either employed by the Government or performing a Government contract; or

(B) conducting a basic suitability or fitness assessment for Federal or contractor employees, using Federal Investigative Standards jointly promulgated by the Security Executive Agent and the Suitability Executive Agent in accordance with—

- (i) Executive Order 13467 (73 Fed. Reg. 38103), or any successor thereto; and
- (ii) the Office of Management and Budget Memorandum “Assignment of Functions Relating to Coverage of Contractor Employee Fitness in the Federal Investigative Standards”, dated December 6, 2012;

(C) credentialing under the Homeland Security Presidential Directive 12 (dated August 27, 2004); and

(D) Federal Aviation Administration checks required under—

- (i) the Federal Aviation Administration Drug Enforcement Assistance Act of 1988 (subtitle E of title VII of Public Law 100-690; 102 Stat. 4424) and the amendments made by that Act; or
- (ii) section 44710 of title 49.

(2)(A) A State central criminal history record depository shall allow a covered agency to con-