

upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

*Procedure.* 1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain his III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§20.36. This section refers to the requirements for obtaining direct access to the III System.

§20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart B in order to allow for processing time that

may be needed by the states before forwarding the disposition to the FBI.

[Order No. 662-76, 41 FR 34949, Aug. 18, 1976, as amended by Order No. 1438-90, 55 FR 32075, Aug. 7, 1990; Order No. 2258-99, 64 FR 52229, Sept. 28, 1999]

## PART 21—WITNESS FEES

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- 21.1 Definitions.
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AUTHORITY: 28 U.S.C. 509, 510, 1821-1825, 5 U.S.C. 301.

SOURCE: 51 FR 16171, May 1, 1986, unless otherwise noted.

### §21.1 Definitions.

(a) *Agency proceeding.* An agency process as defined by 5 U.S.C. 551 (5), (7) and (9).

(b) *Alien.* Any person who is not a citizen or national of the United States.

(c) *Judicial proceeding.* Any action or suit, including any condemnation, preliminary, informational or other proceeding of a judicial nature. Examples of the latter include, but are not limited to, hearings and conferences before a committing court, magistrate, or commission, grand jury proceedings, pre-trial conferences, depositions, and coroners' inquests. It does not include information or investigative proceedings conducted by a prosecuting attorney for the purpose of determining whether an information or charge should be made in a particular case. The judicial proceeding may be in the District of Columbia, a State, or a territory or possession of the United States including the Commonwealth of Puerto Rico or the Trust Territory of the Pacific Islands.

(d) *Pre-trial conference.* A conference between the Government Attorney and a witness to discuss the witness' testimony. The conference must take place after a trial, hearing or grand jury proceeding has been scheduled but prior to the witness' actual appearance at the proceeding.

(e) *Residence.* The term *residence* is not limited to the legal residence, but includes any place at which the witness is actually residing and at which the subpoena or summons is served. If the residence of the witness at the time of appearance is different from the place of subpoena or summons, the new place of residence shall be considered the witness' residence for computation of the transportation allowance; but, if the witness is on a business or vacation trip at the time of appearance, the witness shall be paid for travel from the place of service if this does not result in the witness being paid for more travel than is actually performed.

(f) *Summons.* An official request, invitation or call, evidenced by an official writing of the court, authority, or party responsible for the conduct of the proceeding.

**§21.2 Employees of the United States serving as witnesses.**

(a) *Applicability.* This section applies to employees of the United States as defined by 5 U.S.C. 2105, except those whose pay is disbursed by the Secretary of the Senate or the Clerk of the House of Representatives.

(b) *Entitlement to travel expenses—(1) Official capacity.* An employee is entitled to travel expenses (in accordance with §21.2(c)) in connection with any judicial or agency proceeding with respect to which the employee is summoned (and is authorized by the employee's agency to respond to such summons), or is assigned by his or her agency:

(i) To testify or produce official records on behalf of the United States, or

(ii) To testify in his or her official capacity or produce official records on behalf of a party other than the United States.

The witness appropriation of the Department of Justice is not available for expenses incurred under these conditions.

(2) *Unofficial capacity, federal involvement.* An employee is entitled to travel expenses (in accordance with paragraph (c) of this section) in connection with any judicial or agency proceeding with respect to which the employee is summoned to testify on behalf of the

United States. If an employee is summoned to testify on behalf of a party other than the United States, the employee's travel expenses shall be payable by the court, authority, or party which caused the employee to be summoned.

(3) *Unofficial capacity, no Federal involvement.* An employee who appears as a witness in any judicial proceeding in an unofficial capacity in which there is no Federal involvement is not authorized Government travel expenses and may retain reimbursement for expenses which he or she receives from the court, authority or party which caused the employee to be summoned.

(c) *Allowable travel expenses.* An employee qualifying for payment of travel expenses by virtue of being called in an official capacity or on behalf of the United States shall be paid at rates and in amounts allowable for other purposes under the provisions of 5 U.S.C. 5702-5705 and applicable regulations prescribed thereunder by the Administrator, General Services, and the employing agency. Such payment shall be reduced to the extent that the travel expenses are paid to the employee for his or her appearance by the court, authority, or party which caused the employee to be summoned as a witness in an official capacity on behalf of a party other than the United States.

(d) *Payment and reimbursement—(1) Payable by the employing agency.* If an employee serves as a witness, and the case involves the activity in connection with which he or she is employed, the travel expenses are payable from the appropriation of the employing agency. The Comptroller General has defined the extent to which the case must be related to the agency's activity as a condition to the agency's responsibility for payment in 23 Comp. Gen. 47, 49 (1943), which states "the employing agency is required to pay . . . the traveling expenses incurred by the witness only where the information or facts ascertained by the employee as part of his official duties forms the basis of the case, or where the proceeding is predicated upon a law that that agency is required to administer." In 39 Comp. Gen. 1, 2 (1959), the Comptroller General determined that if an employee testifies regarding facts and

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information he or she acquires in the course of his or her assigned duties, the employing agency is responsible for the payment of the employee's travel expenses. In these instances, the witness appropriation of the Department of Justice is not available for payment of expenses.

(2) *Payable by the Department of Justice.* If an employee appears on behalf of the United States in an unofficial capacity in a judicial proceeding involving the Department of Justice, the employee's travel expenses are payable by the Department of Justice. The employing agency may advance or pay the travel expenses of the employee and later obtain reimbursement from the Department of Justice by submitting an appropriate bill together with a copy of the approved advance or travel voucher.

(e) *Leave and attendance fee—(1) Leave.* An employee is considered to be in official duty status when appearing as a witness in his or her official capacity or on behalf of the United States in an unofficial capacity. An employee is entitled to court leave when he or she appears as a witness in an unofficial capacity not on behalf of the United States, and the United States, the District of Columbia, or a State or local government is a party to the case. An employee must use annual leave or leave without pay to appear as a witness when the United States, the District of Columbia, or a State or local government is not a party.

(2) *Attendance fee.* An employee who appears on behalf of the United States is not entitled to receive an attendance fee. An employee who appears on behalf of a party other than the United States while in official duty status or while on court leave should request an attendance fee from the court, authority, or party which caused the employee to be summoned. Such fee shall be remitted to the employing agency. An employee who must use annual leave or leave without pay to appear as a witness may retain an attendance fee which he or she receives.

#### §21.3 Aliens.

(a) *Aliens entitled to payment of \$30 per day.* The following aliens are entitled

to witness fees and allowances provided in §21.4:

(1) Aliens lawfully admitted for permanent residence (documentary evidence: Form I-151 or Form I-551, Alien Registration Receipt Card);

(2) Aliens lawfully admitted in one of the nonimmigrant categories described in 8 U.S.C. 1101(a)(15) (documentary evidence: unexpired Form I-94, Arrival-Departure Record). But see below §21.3(b);

(3) Aliens admitted as refugees under 8 U.S.C. 1157 and aliens granted asylum under 8 U.S.C. 1158 (documentary evidence: Form I-94, Arrival-Departure Record, indicating admission as refugee under 8 U.S.C. 1157 or granting asylum under 8 U.S.C. 1158, employment authorized);

(4) Aliens who have rendered themselves amenable to deportation proceedings, but have not admitted deportability or have not been determined to be deportable pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).

(b) *Aliens entitled to payment of \$1 per day.* An alien who is "excludable" in accordance with 8 U.S.C. 1226, but whose removal is stayed by the Attorney General (in accordance with 8 U.S.C. 1227(d)) because:

(1) The testimony of the alien is necessary on behalf of the United States in the prosecution of offenders against the United States, or

(2) The testimony of the alien is necessary on behalf of an indigent criminal defendant in accordance with Rule 17(b) of the Federal Rules of Criminal Procedures,

is entitled to a \$1 per day witness fee. No other fees and allowances are authorized.

(c) *Aliens not entitled to payment.* An alien who has been paroled into the United States for prosecution pursuant to 8 U.S.C. 1182(d)(5) (documentary evidence: Form I-94, Arrival-Departure Record, Parole Edition), or an alien who has admitted belonging to a class of aliens who are deportable, or an alien who has been determined pursuant to 8 U.S.C. 1252(b) to be deportable (documentary evidence: decision by a

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Special Inquiry Officer, Board of Immigration Appeals, or court), is prohibited from receiving fees and allowances in accordance with 28 U.S.C. 1821(e).

(d) *Doubtful cases.* If the Immigration and Naturalization Service advises that the alien has admitted deportability, or that he or she was paroled into the United States for prosecution, or that deportation proceedings have been completed against the alien with a result favorable to the Government, no payment under 28 U.S.C. 1821 may be made.

### § 21.4 Fees and allowances of fact witnesses.

The fees and allowances of fact witnesses, other than those covered by § 21.2, attending at any judicial proceeding, shall be as follows:

(a) *Fee.* A witness shall be paid an attendance fee of \$30 per day for each day's attendance. A witness shall also be paid the attendance fee for the time necessarily occupied in going to and returning from the place of attendance. However, if both attendance and travel occur on the same day, a witness is entitled to only one fee.

(b) *Allowable transportation expenses.* A witness shall be entitled to transportation expenses based on the means of transportation reasonably utilized (based on the nature, duration, location and distance of travel) and the distance necessarily traveled from and to such witness' residence by the shortest practical route and the fastest means of transportation available in going to and returning from the place of attendance. Additional costs incurred (including attendance fees and subsistence allowances) because of a slower means of transportation must be justified for consideration.

(1) A witness who travels by regularly scheduled common carrier shall be paid for the actual expenses of transportation at the most economical rate reasonably available. A receipt or other evidence of actual cost shall be furnished.

(2) A witness who travels by privately owned vehicle shall be paid a transportation allowance equal to the mileage allowance paid for official travel of employees of the Federal Government under the provisions of 5

U.S.C. 5704. However, when two or more witnesses travel in the same privately owned vehicle, only the witness incurring the expense shall receive the mileage allowance.

(3) A witness incurring incidental transportation expenses, such as taxi fares between the place of attendance, residence or lodging and the carrier terminals; bridge, road and tunnel tolls; ferry fares; and parking fees shall be paid in full for such expenses. Receipts or other evidence of actual payment are required for *all parking fees* (if available) and all other single items costing more than \$25.

(4) First-class travel by witnesses requires the same justification and approval required for first-class travel by employees of the Federal Government.

(c) *Subsistence allowance.* A witness (other than a witness detained *in custody*) who is required to be away from his or her residence *overnight* is entitled to a subsistence allowance. A witness who *is not* required to be away from his or her residence *overnight is not* entitled to a subsistence allowance. The witness' subsistence allowance shall not exceed either the per diem rate or the actual subsistence allowance rate prescribed for Government employees for the place of attendance. These rates are established by the Administrator, General Services, for areas within the conterminous United States; the Secretary of Defense for areas of the United States other than conterminous; or the Secretary of State as published in the Standardized Regulations (Government Civilians, Foreign Areas) for foreign areas. The witness' subsistence allowance shall consist of a meal and miscellaneous expense portion and a lodging portion. *When an overnight stay is required, the witness shall be entitled to:*

(1) The meal and miscellaneous expense portion for each day (or partial day) the witness is required to remain away from his or her residence and

(2) The lodging portion for each night the witness is required to incur a lodging expense.

The meal and miscellaneous expense portion shall be 50% of the authorized subsistence allowance rate rounded to the next whole dollar in an actual subsistence rate area, or 45% of the per

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diem rate rounded to the next whole dollar in a per diem area. The lodging portion shall be the difference between the meal and miscellaneous expense portion and the authorized rate.

(d) *Detained witness fee.* A witness (other than an alien covered by §21.3) detained *in custody* pursuant to 18 U.S.C. 3149 for want of security for his or her appearance shall receive subsistence *in kind* and shall be paid a single daily attendance fee for each day the witness is detained. A witness in custody for purposes other than 18 U.S.C. 3149 is ineligible to receive the attendance and subsistence fees provided by this section.

### §21.5 Use of table of distances.

Mileage payable to witnesses under 28 U.S.C. 1821 shall be computed on the basis of odometer readings or the highway distances as stated in the Rand McNally Standard Highway Mileage Guide or in any generally accepted highway mileage guide which contains a shortline nationwide table of distances. However, with respect to travel in areas for which no such highway mileage guide exists, mileage payable under 28 U.S.C. 1821 shall be based on the lesser of either (a) the route of travel actually employed or (b) a usually traveled route.

### §21.6 Proceedings *in forma pauperis*.

Title 28 U.S.C. 1915 provides for the commencement, prosecution or defense of any suit, action, or proceeding without prepayment of fees and costs. Witnesses shall attend as in other cases.

(a) *Civil cases.* There are currently no provisions for payment of witnesses called by the indigent. If the indigent party prevails, witness fees and expenses may be taxed as costs in accordance with 28 U.S.C. 1920.

(b) *Criminal cases.* Rule 17(b), Federal Rules of Criminal Procedure, requires that fact witnesses *subpoenaed* on behalf of an indigent defendant be paid in the same manner as witnesses called on behalf of the Government. The attendance must be certified by the presiding officer of the court. The expenses of Federal Government employees are treated in the same manner as they are treated when the employee is called by a Government attorney.

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### §21.7 Certification of witness attendance.

In any case in which the U.S. Department of Justice, or office or organization thereof, is a party, the Department of Justice shall pay all fees and allowances of witnesses, except for those witnesses as defined in §21.2, paragraph (d)(1), on the certification of the following officials: The U.S. Attorney, an Assistant U.S. Attorney, a U.S. Trustee, or the U.S. Department of Justice attorney who actually conducts the case. In criminal proceedings *in forma pauperis* or in proceedings before a U.S. Commissioner, U.S. Magistrate or U.S. Parole Commission Hearing Examiner, the Department of Justice shall pay all fees and allowances of witnesses on the certification of the U.S. District Judge hearing the case or such Commissioner, Magistrate, or Hearing Examiner.

## PART 22—CONFIDENTIALITY OF IDENTIFIABLE RESEARCH AND STATISTICAL INFORMATION

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- 22.1 Purpose.
- 22.2 Definitions.
- 22.20 Applicability.
- 22.21 Use of identifiable data.
- 22.22 Revelation of identifiable data.
- 22.23 Privacy certification.
- 22.24 Information transfer agreement.
- 22.25 Final disposition of identifiable materials.
- 22.26 Requests for transfer of information.
- 22.27 Notification.
- 22.28 Use of data identifiable to a private person for judicial, legislative or administrative purposes.
- 22.29 Sanctions.

AUTHORITY: Secs. 801(a), 812(a), Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3701, *et seq.*, as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, Pub. L. 94-430, Pub. L. 94-503, Pub. L. 95-115, Pub. L. 96-157, and Pub. L. 98-473); secs. 262(b), 262(d), Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, *et seq.*, as amended (Pub. L. 93-415, as amended by Pub. L. 94-503, Pub. L. 95-115, Pub. L. 99-509, and Pub. L. 98-473); and secs. 1407(a) and 1407(d) of the Victims of Crime Act of 1984, 42 U.S.C. 10601, *et seq.*, Pub. L. 98-473; Pub. L. 101-410, 104 Stat. 890, as amended by Pub. L. 104-134, 110 Stat. 1321.

SOURCE: 41 FR 54846, Dec. 15, 1976, unless otherwise noted.