

**§ 94.51**

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APPEAL PROCEDURES

**§ 94.51 Request for reconsideration.**

A victim or representative may, within thirty (30) days after receipt of the determination under § 94.24, appeal the same to the Assistant Attorney General for the Office of Justice Programs, by submitting a written request for review. The Assistant Attorney General may conduct a review and make a determination based on the material submitted with the initial application, or may request additional documentation in order to conduct a more thorough review. In special circumstances, the Assistant Attorney

General may determine that an oral hearing is warranted; in such cases, the hearing shall be held at a reasonable time and place.

**§ 94.52 Final agency decision.**

In cases that are not appealed under § 94.51, the Director's determination pursuant to § 94.24 shall be the final agency decision. In all cases that are appealed, the Assistant Attorney General shall issue a notice of final determination, which shall be the final agency decision, setting forth the findings of fact and conclusions of law supporting his determination.

APPENDIX TO SUBPART A—INTERNATIONAL TERRORISM VICTIM EXPENSE REIMBURSEMENT PROGRAM (ITVERP); CHART OF EXPENSE CATEGORIES AND LIMITS

There are five major categories of expenses for which claimants may seek reimbursement under the ITVERP: (1) Medical expenses, including dental and rehabilitation costs; (2) Mental health care; (3) Property loss, repair, and replacement; (4) Funeral and burial costs; and (5) Miscellaneous expenses.

Expense categories	Subcategories and conditions	Expense limits
Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including, without limitation, treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, without limitation, eyeglasses or other corrective lenses, dental services, prosthetic devices, and prescription medication; and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered. Victim's cost for physiotherapy, occupational therapy; counseling; work-place, vehicle, and home modifications. For example, if a victim were to sustain a physical injury, such as blindness or paralysis, which would affect his ability to perform current professional duties, physical rehabilitation to address work skills would be appropriate.	Up to \$50,000.
Mental health care .....	Victim's (and, when victim is a minor, incompetent, incapacitated, or deceased, certain family members') mental health counseling costs.	Up to 12 months, but not to exceed \$5,000.
Property loss, repair, and replacement.	Includes crime scene cleanup, and replacement of personal property (not including medical devices) that is lost, destroyed, or held as evidence.	Up to \$10,000 to cover repair or replacement, whichever is less.
Funeral and burial costs	Includes, without limitation, the cost of disposition of remains, preparation of the body and body tissue, refrigeration, transportation of remains, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably associated activities.	Up to \$25,000.
Miscellaneous expenses	Includes, without limitation, temporary lodging up to 30 days, local transportation, telephone costs, etc.; with respect to emergency travel, two family members' transportation costs to country where incident occurred (or other location, as appropriate) to recover remains, care for victim, care for victim's dependents, accompany victim to receive medical care abroad, accompany victim back to U.S., and attend to victim's affairs in host country.	Up to \$15,000.

Subparts B–D [Reserved]

**PART 97—STANDARDS FOR PRIVATE ENTITIES PROVIDING PRISONER OR DETAINEE SERVICES**

Sec.  
97.1 Purpose.

## Department of Justice

## §97.11

- 97.2 Definitions.
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- 97.18 Notification of local law enforcement prior to scheduled stops.
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- 97.22 No pre-emption of federal, State, or local laws or regulations.
- 97.24 No civil defense created.
- 97.30 Enforcement.

AUTHORITY: Pub. L. 106-560, 114 Stat. 2784 (42 U.S.C. 13726b).

SOURCE: Order No. 2640-2002, 67 FR 78710, Dec. 26, 2002, unless otherwise noted.

### §97.1 Purpose.

This part implements the provisions of The Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106-560, 114 Stat. 2784 (42 U.S.C. 13726b) (enacted December 21, 2000) (“the Act”), to provide minimum security and safety standards for private companies that transport violent prisoners on behalf of State and local jurisdictions.

### §97.2 Definitions.

(a) *Crime of violence.* The term “crime of violence” has the same meaning as in section 924(c)(3) of title 18, United States Code. Section 924(c)(3) states that the term crime of violence means an offense that is a felony and has as an element the use, attempted use, or threatened use of physical force against the person or property of another, or that by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense.

(b) *Private prisoner transport company.* The term “private prisoner transport company” (“company”) means any entity, other than the United States, a State, or an inferior political subdivision of a State, that engages in the business of transporting for compensation individuals committed to the custody of any State or of an inferior po-

litical subdivision of a State, or any attempt thereof.

(c) *Violent prisoner.* The term “violent prisoner” means any individual in the custody of a State or an inferior political subdivision of a State who has previously been convicted of or is currently charged with a crime of violence or any similar statute of a State or the inferior political subdivisions of a State, or any attempt thereof.

### §97.11 Pre-employment screening.

Private prisoner transport companies must adopt pre-employment screening measures for all potential employees. The pre-employment screening measures must include a background check and a test for use of controlled substances. The failure of a potential employee to pass either screening measure will act as a bar to employment.

(a) *Background checks must include:*

(1) A fingerprint-based criminal background check that disqualifies persons with either a prior felony conviction or a State or Federal conviction for a misdemeanor crime of domestic violence as defined in 18 U.S.C. 921;

(2) A Credit Report check;

(3) A physical examination; and

(4) A personal interview.

(b) *Testing for controlled substances.* (1) Pre-employment testing for controlled substances must be in accordance with applicable State law.

(2) In the event that there is no applicable State law, pre-employment testing for controlled substances must be in accordance with the provisions of Department of Transportation regulations at 49 CFR 382.301 which will apply regardless of whether a private prisoner transport company is covered by Department of Transportation regulations.

(c) The criminal background check references in paragraph (a)(1) of this section may not be submitted directly to the FBI or any other Federal agency. The private prisoner transport companies must arrange the procedures for accomplishing the criminal background checks with their contracting governmental agencies. In the event that the private prisoner transport company is contracting with a privately run incarceration facility, and

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not directly with a governmental entity, the private prisoner transport company will have to make arrangements through the private incarceration facility to have the checks completed by the governmental entity ultimately requesting the transport.

### § 97.12 Employee training.

Private prisoner transport companies must require the completion of a minimum of 100 hours of employee training before an employee may transport violent prisoners. Training must include instruction in each of these six areas:

- (a) Use of restraints;
- (b) Searches of prisoners;
- (c) Use of force, including use of appropriate weapons and firearms;
- (d) Cardiopulmonary resuscitation (CPR);
- (e) Map reading; and
- (f) Defensive driving.

### § 97.13 Maximum driving time.

Companies covered under this part must adhere to the maximum driving time provisions applicable to commercial motor vehicle operators, as set forth in Department of Transportation regulations at 49 CFR 395.3 which will apply regardless of whether a private prisoner transport company is covered by Department of Transportation regulations.

### § 97.14 Guard-to-prisoner ratio.

Companies covered under this part must adhere to certain minimum standards with respect to the number of employees required to monitor violent prisoners during transportation. Private prisoner transport companies must ensure that at least one guard be on duty for every six violent prisoners transported. This requirement does not preclude a contracting entity from establishing more stringent guard-to-prisoner ratios.

### § 97.15 Employee uniforms and identification.

(a) *Employee uniforms.* Uniforms used by private prisoner transport companies must meet the following requirements:

- (1) Uniforms must be readily distinguishable in style and color from official uniforms worn by United States

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Department of Justice employees who transport violent offenders;

(2) Uniforms must prominently feature a badge or insignia that identifies the employee as a prisoner transportation employee; and

(3) Uniforms must be worn at all times while the employee is engaged in the transportation of violent prisoners.

(b) *Employee identification.* Identification utilized by private prisoner transport companies must meet the following requirements:

(1) The identification credentials must clearly identify the employee as a transportation employee. The credentials must have a photograph of the employee that is at least one inch square, a printed personal description of the employee including the employee's name, the signature of the employee, and date of issuance; and

(2) The employee must display proper identification credentials on his or her uniform and ensure that the identification is visible at all times during the transportation of violent prisoners.

### § 97.16 Clothing requirements for transported violent prisoners.

Companies covered under this part must ensure that all violent prisoners they transport are clothed in brightly colored clothing that clearly identifies them as violent prisoners, unless security or other specific considerations make such a requirement inappropriate.

### § 97.17 Mandatory restraints to be used while transporting violent prisoners.

Companies covered under this part must, at a minimum, require that violent prisoners be transported wearing handcuffs, leg irons, and waist chains unless the use of all three restraints would create a serious health risk to the prisoner, or extenuating circumstances (such as pregnancy or physical disability) make the use of all three restraints impracticable.

### § 97.18 Notification of local law enforcement prior to scheduled stops.

When transporting violent prisoners, private prisoner transport companies are required to notify local law enforcement officials 24 hours in advance

of any scheduled stops in their jurisdiction. For the purposes of this part, a scheduled stop is defined as a predetermined stop at a State, local, or private correctional facility for the purpose of loading or unloading prisoners or using such facilities for overnight, meal, or restroom breaks. Scheduled stops do not include routine fuel stops or emergency stops.

**§ 97.19 Immediate notification of local law enforcement in the event of an escape.**

Private prisoner transport companies must be sufficiently equipped to provide immediate notification to law enforcement in the event of a prisoner escape. Law enforcement officials must receive notification no later than 15 minutes after an escape is detected unless the company can demonstrate that extenuating circumstances necessitated a longer delay. In the event of the escape of a violent prisoner, a private prisoner transport company must:

- (a) Ensure the safety and security of the remaining prisoners;
- (b) Provide notification within 15 minutes to the appropriate State and local law enforcement officials;
- (c) Provide notification as soon as practicable to the governmental entity or the privately run incarceration facility that contracted with the transport company; and
- (d) Provide complete descriptions of the escapee and the circumstances surrounding the escape to State and local law enforcement officials if needed.

**§ 97.20 Standards to ensure the safety of violent prisoners during transport.**

Companies covered under this section must comply with applicable State and federal laws that govern the safety of violent prisoners during transport. In addition, companies covered under this section are to ensure that:

- (a) Protective measures are in place to ensure that all vehicles are safe and well-maintained;
- (b) Vehicles are equipped with efficient communications systems that are capable of immediately notifying State and local law enforcement officials in the event of a prisoner escape;

(c) Policies, practices, and procedures are in effect to ensure the health and physical safety of the prisoners during transport, including a first-aid kit and employees who are qualified to dispense medications and administer CPR and emergency first-aid;

(d) Policies, practices, and procedures are in effect to prohibit the mistreatment of prisoners, including prohibitions against covering a prisoner's mouth with tape, the use of excessive force, and sexual misconduct;

(e) Policies, practices, and procedures are in effect to ensure that juvenile prisoners are separated from adult prisoners during transportation, where practicable;

(f) Policies, practices, and procedures are in effect to ensure that female prisoners are separated from male prisoners during transportation, where practicable;

(g) Policies, practices, and procedures are in effect to ensure that female guards are on duty to supervise the transportation of female violent prisoners, where practicable;

(h) Staff are well trained in the handling and restraint of prisoners, including the proper use of firearms and other restraint devices, and have received specialized training in the area of sexual harassment; and

(i) Private transport companies are responsible for taking reasonable measures to insure the well being of the prisoners in their custody including, but not limited to, necessary stops for restroom use and meals, proper heating and ventilation of the transport vehicle, climate-appropriate uniforms, and prohibitions on the use of tobacco, in any form, in the transport vehicle.

**§ 97.22 No pre-emption of federal, State, or local laws or regulations.**

The regulations in this part implement the Act and do not pre-empt any applicable federal, State, or local law that may impose additional obligations on private prisoner transport companies or otherwise regulate the transportation of violent prisoners. All federal laws and regulations governing interstate commerce will continue to apply to private prisoner transport companies including, but not limited

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to: federal laws regulating the possession of weapons, Federal Aviation Administration or Transportation Security Administration rules and regulations governing travel on commercial aircraft, and all applicable federal, State, or local motor carrier regulations. The regulations in this part in no way pre-empt, displace, or affect the authority of States, local governments, or other federal agencies to address these issues.

**§ 97.24 No civil defense created.**

The regulations in this part on private prisoner transport companies are not intended to create a defense to any civil action, whether initiated by a unit of government or any other party. Compliance with the regulations in this part is not intended to and does not establish a defense against an allegation of negligence or breach of contract. Regardless of whether a contractual agreement establishes minimum precautions, the companies affected by the regulations in this part will remain subject to the standards of care that are imposed by constitutional, statutory, and common law upon their activities (or other activities of a similarly hazardous nature).

**§ 97.30 Enforcement.**

Any person who is found in violation of the regulations in this part will:

- (a) Be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each violation;
- (b) Be liable to the United States for the costs of prosecution; and
- (c) Make restitution to any entity of the United States, of a State, or of an inferior political subdivision of a State, that expends funds for the purpose of apprehending any violent prisoner who escapes from a prisoner transport company as the result, in whole or in part, of a violation of the regulations in this part promulgated pursuant to the Act.

**PART 100—COST RECOVERY REGULATIONS, COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT OF 1994**

Sec.  
100.9 General.

- 100.10 Definitions.
- 100.11 Allowable costs.
- 100.12 Reasonable costs.
- 100.13 Directly assignable costs.
- 100.14 Directly allocable costs.
- 100.15 Disallowed costs.
- 100.16 Cost estimate submission.
- 100.17 Request for payment.
- 100.18 Audit.
- 100.19 Adjustments to agreement estimate.
- 100.20 Confidentiality of trade secrets/proprietary information.
- 100.21 Alternative dispute resolution.

AUTHORITY: 47 U.S.C. 1001-1010; 28 CFR 0.85(c).

SOURCE: 62 FR 13324, Mar. 20, 1997, unless otherwise noted.

**§ 100.9 General.**

These Cost Recovery Regulations were developed to define allowable costs and establish reimbursement procedures in accordance with section 109(e) of Communications Assistance for Law Enforcement Act (CALEA) (Public Law 103-414, 108 Stat. 4279, 47 U.S.C. 1001-1010). Reimbursement of costs is subject to the availability of funds, the reasonableness of costs, and an agreement by the Attorney General or designee to reimburse costs prior to the carrier's incurrence of said costs.

**§ 100.10 Definitions.**

*Allocable* means chargeable to one or more cost objectives and can be distributed to them in reasonable proportion to the benefits received.

*Business unit* means any segment of an organization for which cost data are routinely accumulated by the carrier for tracking and measurement purposes.

*Cooperative agreement* means the legal instrument reflecting a relationship between the government and a party when—

(1) The principal purpose of the relationship is to reimburse the carrier to carry out a public purpose of support or stimulation authorized by a law of the United States; and

(2) Substantial involvement is expected between the government and carrier when carrying out the activity contemplated in the agreement.

*Cost element* means a distinct component or category of costs (e.g. materials, direct labor, allocable direct costs, subcontracting costs, other