4. Section 24.301 is amended by removing the word ''and'' at the end of paragraph (i), removing the period at the end of paragraph (j) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (k) to read as follows:

§ 24.301 Bulk still wine record.

* * * * *

[The text of proposed § 24.301 is the same as the text of § 24.301 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

5. Section 24.302 is amended by removing the word ''and'' at the end of paragraph (h), removing the period at the end of paragraph (i) and adding, in its place, a semicolon followed by the word ''and'', and adding a new paragraph (j) to read as follows:

§ 24.302 Effervescent wine record.

* * * * *

[The text of proposed § 24.302 is the same as the text of § 24.302 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

6. The authority citation for part 27 is revised to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5382, 5555, 6302, 7805.

7. Subpart I, Importer's Records and Reports, is amended by adding a new § 27.140 to read as follows:

§ 27.140 Certification requirements for wine.

* * * * *

[The text of proposed § 27.140 is the same as the text of § 27.104 as set forth in the temporary rule published elsewhere in this issue of the **Federal Register**.]

Signed: August 4, 2005.

John J. Manfreda,

Administrator.

Approved: August 4, 2005.

Timothy E. Skud,

Deputy Assistant Secretary (Tax, Trade, and Tariff Policy).

[FR Doc. 05–16771 Filed 8–23–05; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

28 CFR Part 94

[OJP (OJP)—Docket No. 1368]

RIN 1121–AA63

International Terrorism Victim Expense Reimbursement Program

AGENCY: Office of Justice Programs, Justice.

ACTION: Notice of proposed rulemaking with request for comments.

SUMMARY: The Office of Justice Programs (''OJP'') proposes the following regulations to implement provisions of the Victims of Crime Act of 1984 (the ''VOCA'') (42 U.S.C. 10601 *et seq.*), which authorize the Director of the Office for Victims of Crime (''OVC''), a component of OJP, to establish an International Terrorism Victim Expense Reimbursement Program (hereinafter referred to as the ''ITVERP'') to reimburse eligible ''direct'' victims of acts of international terrorism that occur outside the United States for ''expenses associated with that victimization.''

DATES: Interested parties are invited to submit written comments on these proposed regulations by October 24, 2005.

ADDRESSES: Please address all comments regarding these proposed regulations, by U.S. mail, to: ITVERP, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531; by telefacsimile (fax), on: 202–514–2940; or by e-mail, to: *ITVERP@usdoj.gov*. To ensure proper handling, please reference OJP Docket No. 1368 on your correspondence. You may view an electronic version of this proposed rule at *www.regulations.gov*, and you may also comment by using the *www.regulations.gov* comment form for this regulation. When submitting comments electronically you must include OJP Docket No. 1368 in the subject box.

FOR FURTHER INFORMATION CONTACT: Carolyn Hightower, Principal Deputy Director, Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, NW., Washington, DC 20531; by telephone, at: 1–800–363–0441; or by e-mail, at: *ITVERP@usdoj.gov*.

SUPPLEMENTARY INFORMATION: As authorized by the VOCA, OVC generally provides federal financial assistance to states for the purpose of compensating and assisting victims of crime, provides funds for training and technical assistance services for victims of federal crimes, and provides funding and services for victims of terrorism and mass violence. This program is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury.

These proposed regulations concern the administration of the ITVERP, as authorized by a 2000 VOCA amendment codified at 42 U.S.C. 10603c (the ''Statute'').

I. Background

Over the years, hundreds of nationals of the United States, and officers and employees of the U.S. government, have been killed or injured in heinous acts of international terrorism occurring outside the United States. Victims of acts of international terrorism occurring outside the United States face unique obstacles in securing assistance, compensation, and support, which is more readily available to victims of violent crime and domestic or international terrorism occurring within U.S. borders. Victims and family members often face immediate needs, such as covering medical care, funeral and burial, short-term lodging, and emergency transportation expenses. Language and cultural barriers can impair victims' ability to secure appropriate support. Moreover, resources for victim assistance vary widely from one country to the next. Many of the countries that have established victim reimbursement programs compensate only their own citizens, leaving American citizens without benefits. Although OVC provides funding to states to administer victim compensation programs, the programs administered by each state vary considerably; survivors of the same act of international terrorism occurring abroad may be residents of many different states, and thus receive different levels of compensation for similar injuries. Partially in recognition of this disparity of treatment, VOCA was amended so that states shall no longer be required to compensate victims of international terrorism occurring outside the United States, and the federal government shall oversee an expense reimbursement program for these victims. *See* Victims of Trafficking Violence Protection Act, Pub. L. 106–386, div. C, § 2003(c)(1), 114 Stat. 1464, 1544 to 1546; USA PATRIOT Act, Pub. L. 107–56, tit. VI, subtit. B, § 624(c), 115 Stat. 272, 373.

1. Eligibility

To be eligible to receive a reimbursement under this program, an individual victim of international terrorism abroad must be (as of the date on which the act of international terrorism occurred) either a national of the United States or an officer or employee of the U.S. government, which could include foreign nationals working for the U.S. government who may be killed or injured in an international terrorist attack. The term ''national of the United States'' has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)). The term ''officer or employee of the United States Government'' is defined in § 94.12 of these proposed regulations.

In addition, the Statute expressly requires that the individual victim must have suffered ''direct physical or emotional injury or death as a result of an act of international terrorism occurring on or after December 21, 1988, with respect to which an investigation or prosecution was ongoing or was commenced after April 24, 1996.'' No victim, however (or victim's family) may recover under this subpart, if the victim is found to be ''criminally culpable'' for the terrorist act. For the purposes of this program, the Attorney General shall determine whether there is a reasonable indication that an act of international terrorism has occurred.

2. Direct Injury

The Statute provides that a victim eligible for reimbursement is ''a person who suffered direct physical or emotional injury or death'' as a result of an act of international terrorism. Pursuant to this requirement of ''direct injury,'' individuals present during the act of terrorism, as well as qualifying emergency responders who otherwise meet the eligibility requirements and deal with the immediate aftermath of the event, are covered. Accordingly, under the Statute, family members who were not present during the act of terrorism would not be ''direct[ly]'' injured and therefore could be reimbursed only on behalf of a victim who was present, and not in their own right. An analogous provision of VOCA, however, relating to ''direct harm,'' recognizes that family members also can be ''direct[ly]'' injured when the immediate victim at the time of or as a result of the act is a minor, incompetent, incapacitated, or is killed. *See generally* 42 U.S.C. 10607(e)(2). These regulations essentially incorporate that recognition into the eligibility provisions.

3. Determination of Reasonable Indication of Act of International Terrorism

The determination that there is a reasonable indication that an act of international terrorism has occurred will ordinarily be made by the Attorney General, as soon as is practicable. The Attorney General may delegate the authority to make this determination, pursuant to 5 U.S.C. 301 and 28 U.S.C. 510. The Attorney General or official to whom authority is delegated will consult with the Director of National Intelligence, or such official to whom authority is delegated, in making this determination. In certain instances in which such a determination is not made until after a significant amount of time has passed, the Director of OVC may, at his discretion, extend the deadline for filing a claim.

In all cases, notice of the Attorney General's determination that there is a reasonable indication that an act of international terrorism has occurred, which would make reimbursement available under the ITVERP, will be posted on the OVC Web site at *www.ovc.gov*. Note: The determination that there is a reasonable indication that an act of international terrorism has occurred is only for the purposes of determining eligibility for reimbursement of expenses under this program. Such a determination should not be understood to apply in any other proceeding or matter, nor should it create any inference that prosecution is warranted.

4. Expense-Based Reimbursement Program

The Statute provides that eligible victims of international terrorism may be reimbursed ''for expenses associated with that victimization.'' The language of the Statute restricts the ITVERP program to one that directly reimburses victims for actual out-of-pocket expenses. As shown in a chart appended to this regulation, there are five major categories of expenses for which claimants can seek reimbursement under the ITVERP: (1) Medical, including dental and rehabilitation costs; (2) mental health care; (3) property loss, repair, and replacement; (4) funeral and burial costs; and (5) miscellaneous expenses. Thus, under this proposed rule, reimbursement is not available for lost wages or non-monetary losses, such as for pain and suffering, loss of enjoyment of life, loss of consortium, etc.

5. Submission of Claims

In order to be eligible for payment, either a victim or an individual legally designated to represent a victim must submit application materials, that will have been approved in advance by the Office of Management and Budget (''OMB''). These materials are designed to be simple, but ordinarily will require submission of sufficient information to determine eligibility under the Statute and these regulations, legally justify a claim and, as appropriate, verify unreimbursed expenses incurred. It is anticipated that all such materials will be available electronically via the OVC Web site. Because the Statute authorizes that reimbursement may be made to victims of acts of international terrorism that occurred as early as December, 1988, there will likely be cases in which victims no longer have the original receipts for items or services for which they are seeking reimbursement. In cases of international terrorism that occurred before the establishment of the ITVERP (and also in cases in which the records have been destroyed or lost), at the discretion of the Director, OVC may accept an itemized list of expenses. In such cases, the victim, or his representative, must certify that original receipts are unavailable, and attest that the items and amounts submitted in the list are true and correct to the best of claimant's knowledge.

Other individuals, such as friends, family members, or attorneys, may assist the victim or representative in preparation of the application. But, in no instance (with a limited exception for interim emergency payments) shall individuals who do not meet the definition of a ''victim'' be allowed to file a claim or accept payment under a claim, unless that individual is a representative of the victim. OVC will communicate directly with the appropriate claimant concerning the disposition of each claim, fully explain reasons for denial of any claim, and provide referrals of alternate sources of assistance, as appropriate.

If necessary, a victim may submit supplemental documentation requesting payment for additional expenses after the initial claim is filed. Any intentional false claim for reimbursement may be subject to prosecution under 18 U.S.C. 1001 (false statement made to the United States Government).

6. Interim Emergency Payments

Recognizing that victims of international terrorism abroad may have difficulty accessing the resources needed to address immediate financial needs, OJP has included a provision in

the proposed ITVERP regulations that would allow victims to apply for immediate partial reimbursement. A victim may apply for an interim emergency payment in cases in which the time that it would take for OVC to do a complete review of a claim would cause substantial hardship. Such payment may be used to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation.

7. Limitations on Award Amounts

A chart detailing the categories of expenses and applicable limits may be found below, at the end of these regulations.

8. Collateral Sources

Under the terms of the Statute and Title VIII of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, the amount of expenses reimbursed to a victim must be reduced by any amount of reimbursement that the victim receives under Title VIII in connection with the same act of international terrorism. OJP looked at the types of compensation and benefits that are considered collateral sources under Title VIII, 10 U.S.C. 1051(b), which provides that—

> Any compensation otherwise payable to a person under this section in connection with any disability or death shall be reduced by any amount payable to such person under any other program funded in whole or in part by the United States in connection with such disability or death, except that nothing in this subsection shall result in the reduction of any amount below zero.

Consistent with this section, OJP has determined that sources that provide reimbursement for specific expenses under the ITVERP—e.g., health, property, and funeral insurance—are considered collateral sources. Life insurance proceeds are not considered a collateral source, as they do not compensate for specific expenses. This definition of collateral sources is consistent with other provisions relating to crime victim reimbursement programs under VOCA.

Any lump sum payment from the United States or a foreign government source that provides general compensation will be considered a collateral source, unless that payment is in the nature of reimbursement for a specific category of expenses that is not covered under the ITVERP. For example, if a claimant receives payment from a government to provide compensation for a claimant's car that is destroyed as a result of an act of international terrorism, such payment is not considered a collateral source under the ITVERP, which does not reimburse for that particular expense.

In cases in which another organization chooses to provide supplemental reimbursement in a certain category, beyond the ITVERP limit in that category, the supplemental reimbursement will not be considered a collateral source, and thus will not reduce the amount that the claimant receives from the ITVERP. For example, if reimbursement in the category of ''mental health'' were limited to 12 months, state compensation programs providing additional compensation in excess of the limit under ITVERP would not be counted as collateral sources. Thus, for example, if an eligible victim's mental health expenses extended beyond 12 months, and a state wished to reimburse him for an additional period of time, OJP would not consider the state reimbursement to be a collateral source, and would not reduce the award under the ITVERP. The victim could receive the maximum reimbursement within that category under the ITVERP in addition to the state reimbursement.

9. Limitations on Eligibility for Reimbursement

The Statute provides that reimbursement will be denied to ''any individual who is criminally culpable for the terrorist act.'' Thus, no victim (or family member thereof) who is responsible for an act of international terrorism will be allowed to be reimbursed. For example, neither a ''suicide bomber'' nor his family will be reimbursed following his injury or death.

Similarly, reimbursement may be reduced or denied, at the discretion of the Director, to specific individuals whose illegal or grossly reckless conduct at the time of the act of international terrorism materially contributed to their death or injury; this is not intended to apply to individuals such as international relief and humanitarian aid workers within organizations whose primary purpose is to provide charitable aid or a service in the public interest—often under dangerous conditions.

10. Appeal Hearings

If, after conducting a review of a claimant's written appeal, the Assistant Attorney General determines that an oral hearing is warranted, the hearing may be conducted by an individual to whom the Assistant Attorney General has delegated that responsibility.

11. Consultation With External Entities

Prior to drafting these regulations, OJP consulted with individuals and working groups comprised of federal and state government officials, victims of international terrorism, victim advocates, and non-governmental victim organizations on various concepts related to compensation for victims of international terrorism. OJP officially convened working group meetings in June 2001 and February 2002. In addition, many other discussions, informal meetings, and draft reviews were held by OJP throughout the development of these regulations, from February 2001 until the publication of these proposed regulations in the **Federal Register**. Federal government agencies participating in these working groups and discussions included the Department of State, the Federal Bureau of Investigation, the United States Agency for International Development, the Department of Defense, the Office of Personnel Management, and the National Transportation Safety Board. State crime victim compensation program representatives from New Jersey, Virginia, Oklahoma, and Idaho also participated in working group meetings, as did a representative from the National Association of Crime Victim Compensation Boards. OJP also sought input from victims who would be eligible to apply for this program.

Whenever possible, OJP attempted to address the concerns raised during the working group sessions and in meetings with various groups. For example, in response to concerns that it would cause hardship for some victims who may be unable to produce receipts for expenses incurred, the proposed ITVERP regulations allow, at the discretion of the Director, victims to certify that the receipts are unavailable, and to provide an itemized list of expenses.

In certain instances, however, concerns were raised that could not be fully addressed, such as the suggestion that, in drafting regulations for the ITVERP, OJP replicate the September 11th Victim Compensation Fund of 2001. The statute authorizing the September 11th Victim Compensation Fund is radically different, however, from the statute authorizing the ITVERP, in the scope of compensation that is mandated. For instance, the September 11th Victim Compensation Fund was not an expense-based program, as the ITVERP is required by statute to be. In noting that various individuals and groups participated in meetings and discussions with OJP staff, OJP does not wish to imply that these individuals or groups have or have not endorsed the

provisions contained within these proposed regulations.

II. Regulatory Certifications

Executive Order 12866—Regulatory Planning and Review

This regulation has been drafted and reviewed in accordance with Exec. Order No. 12866, section 1(b), 58 FR 51735 (Sept. 30, 1993), Principles of Regulation. OJP has determined that this rule is a ''significant regulatory action'' under Executive Order No. 12866, and accordingly, this rule has been reviewed by the Office of Management and Budget.

Executive Order 13132—Federalism

This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Exec. Order No.13132, 64 FR 43255 (Aug. 4, 1999), it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Cost/Benefit Assessment

This rule has no cost to state, local, or tribal governments, nor to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury, and set aside in the Antiterrorism Emergency Reserve Fund, whose funds may not be obligated in an amount above $50 million in any given year. The cost to the federal government consists both of administrative expenses and amounts reimbursed to victims. Both types of costs depend on the number of claimants, prospective as well as retroactive. Because of the statutory cap on spending and the number of potential retroactive claimants (approximately 900), it is expected that the program may spend the statutory maximum of $50 million each year for the first 2–3 years of the program's operation.

Regulatory Flexibility Act

These proposed regulations will not have a significant economic impact on a substantial number of small entities. These regulations have no cost to state, local, or tribal governments, nor to the private sector. The ITVERP is funded by fines, fees, penalty assessments, and bond forfeitures paid by federal offenders, as well as gifts from private individuals, deposited into the Crime Victims Fund in the U.S. Treasury. Therefore, an analysis of the impact of these regulations on such entities is not required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act of 1995

The collection of information requirements contained in these proposed regulations have been submitted to the Office of Management and Budget, pursuant to the Paperwork Reduction Act (44 U.S.C. 3506). Applicants seeking reimbursement from this program will be required to submit an official application form (the International Terrorism Victim Expense Reimbursement Program Application), that has been created by OJP. This application is a new information collection instrument that will be used to collect necessary information from and about the victims and claimants regarding expenses incurred by them, to be used by OJP in making a reimbursement determination. The total number of respondents (including both direct victims and family members) for this collection is estimated to be 2,000. This represents the estimated number of claimants who are currently eligible to request reimbursement under the ITVERP. The total initial public burden associated with this initial information collection is estimated to be approximately 1,500 hours. The amount of time for an average respondent to respond/reply is estimated to be approximately 45 minutes.

Written comments regarding the application form should be directed to OMB, Office of Information and Regulation Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20503, (202) 395–5806. Suggestions or questions regarding the application form, including requests for copies of the proposed information collection instrument with instructions, should be directed by U. S. mail, to: ITVERP, Office for Victims of Crime, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531; by facsimile at: (202) 514–6383; or by e-mail, at: *ITVERP@usdoj.gov*.

Your comments are solicited to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including whether the information will have practical utility; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including making available appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, to ensure full consideration by OMB, comments should be received within 30 days of publication. This does not affect the deadline for the public to submit comments to the Department on the proposed regulations.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

List of Subjects in 28 CFR Part 94

Administrative practice and procedures; International terrorism; Victim compensation.

Accordingly, for the reasons set forth in the preamble, Title 28 of the Code of Federal Regulations is proposed to be amended to add a new Part 94, to read as follows:

PART 94—CRIME VICTIM SERVICES

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

Sec.
94.11 Purpose.
94.12 Definitions.
94.13 Terms.

Coverage

94.21 Eligibility.
94.22 Categories of expenses.
94.23 Amount of reimbursement.
94.24 Determination of award.
94.25 Collateral sources.

Program Administration

94.31 Application procedures.
94.32 Application deadline.
94.33 Investigation and analysis of claims.

Payment of Claims

94.41 Interim emergency payment.
94.42 Repayment and waiver of repayment.

Appeal Procedures

94.51 Request for reconsideration.

94.52 Final agency decision.
Appendix to Subpart A
Subpart B—[Reserved]
Subpart C—[Reserved]
Subpart D—[Reserved]

Authority: 42 U.S.C. 10603C, 10604.

Subpart A—International Terrorism Victim Expense Reimbursement Program

Introduction

§ 94.11 Purpose.

The purpose of this subpart is to implement the provisions of VOCA, Title II, Sec. 1404C (42 U.S.C. 10603C), which authorize the Director (Director), Office for Victims of Crime (OVC), a component of the Office of Justice Programs (OJP), to establish a program to reimburse eligible victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

§ 94.12 Definitions.

The following definitions shall apply to this subpart:

(a) *Child* means any biological or legally-adopted child, or stepchild, of a deceased victim, who, at the time of the victim's death, is

(1) Under the age of 18 years; or

(2) Over 18 years of age and a student, as defined in 5 U.S.C. 8101.

(b) *Claimant* means a victim, or his representative, who is authorized to sign and submit an application, and receive payment for reimbursement, if appropriate.

(c) *Collateral sources* means sources that provide reimbursement for specific expenses compensated under this subpart, including, without limitation, property, health, disability, or other insurance for specific expenses; Medicare or Medicaid; worker's compensation programs; military or veterans' benefits of a compensatory nature; vocational rehabilitation benefits; restitution; and other state, federal, foreign, and international compensation programs, except that any compensation received under this subpart shall be reduced by the amount of any lump sum payment whatsoever, received from, or in respect of the United States or a foreign government, unless the claimant can show that such payment was for a category of expenses not covered under this subpart.

(d) *Deceased* means persons who are dead or are missing and presumed dead.

(e) *Dependent* has the meaning given in 26 U.S.C. 152. If the victim was not required by law to file a U.S. federal income tax return for the year prior to the act of international terrorism, a person shall be deemed to be a victim's dependent if he was reliant on the income of the victim for over half of his support in that year.

(f) *Funeral and burial* means those activities involved in the disposition of the remains of a deceased victim, to include preparation of the body and body tissue, refrigeration, transportation, cremation, procurement of a final resting place, urns, markers, flowers and ornamentation, costs related to memorial services, and other reasonably-associated activities, including travel for not more than two family members.

(g) *Incapacitated* means substantially impaired by mental illness or deficiency, or by physical illness or disability, to the extent that personal decision-making is impossible.

(h) *Incompetent* means unable to care for oneself because of mental illness or disability, mental retardation, or dementia.

(i) Pursuant to 42 U.S.C. 10603C, *international terrorism* has the meaning given in 18 U.S.C. 2331. As of the date of these regulations, the statute defines the term to mean activities that—

(1) Involve violent acts or acts dangerous to human life that are a violation of the criminal laws of the United States or of any state, or that would be a criminal violation if committed within the jurisdiction of the United States or of any state;

(2) Appear to be intended—

(i) To intimidate or coerce a civilian population;

(ii) To influence the policy of a government by intimidation or coercion; or

(iii) To affect the conduct of a government by mass destruction, assassination, or kidnaping; and

(3) Occur primarily outside the territorial jurisdiction of the United States, or transcend national boundaries in terms of the means by which they are accomplished, the persons they appear intended to intimidate or coerce, or the locale in which their perpetrators operate or seek asylum.

(j) *Legal guardian* means legal guardian, as the term is defined under the laws of the jurisdiction of which the ward is or was a legal resident, except that if the ward is or was a national of the United States, the legal guardianship must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(k) *Medical expenses* means costs associated with the treatment, cure, or mitigation of a disease, injury, or mental or emotional condition that is the result of an act of international terrorism. Allowable medical expenses include, without limitation, compensation for eyeglasses or other corrective lenses, dental services, rehabilitation costs, prosthetic or other medical devices, prescription medication, and other services rendered in accordance with a method of healing recognized by the jurisdiction in which the medical care is administered.

(l) *Mental health care* means mental health care provided by a person who meets professional standards to provide these services in the jurisdiction in which the care is administered.

(m) *National of the United States* has the meaning given in section 101(a) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(22)). As of the date of these regulations, the statute defines the term to mean ''a citizen of the United States, or a person who, though not a citizen of the United States, owes permanent allegiance to the United States.''

(n) *Officer or employee of the U.S. government.* (1) *Officer* of the United States government has the meaning given in 5 U.S.C. 2104.

(2) *Employee* of the United States government means any person who:

(i) Is an employee of the United States government under federal law; or

(ii) Receives a salary or compensation of any kind from the United States government for personal services directly rendered to the United States, similar to those of an individual in the United States civil service, or is a contractor of the United States government (or an employee of such contractor) rendering such personal services

(o) *Outside the United States* means outside any state of the United States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any other possession or territory of the United States.

(p) *Parent* means a biological or legally-adoptive parent, or stepparent, unless his parental rights have been terminated in the jurisdiction where the child is or was a legal resident, except that if the child or either parent is a national of the United States, the termination must be pursuant to an order of a court of competent jurisdiction of or within the United States.

(q) *Property loss* refers to items of personal property (other than medical devices, which are included in the category of ''medical expenses'') that are lost, destroyed, or held as evidence.

(r) *Rehabilitation costs* includes reasonable costs for the following: Physiotherapy; occupational therapy;

counseling, and workplace, vehicle, and home modifications.

(s) *Representative* means a family member or legal guardian authorized to file a claim on behalf of a victim who is less than18 years of age, incompetent, incapacitated, or deceased, except that no person shall be considered a representative who was criminally culpable for the act of international terrorism. In the event that no family member or legal guardian is available to file a claim for an interim emergency payment on behalf of a victim, under § 94.41, a U.S. consular officer or U.S. embassy official within the country may act as a representative, consistent with any limitation on his authority contained in 22 CFR 92.81(b).

(t)(1) *Victim* has the meaning given in 42 U.S.C. 10603c(a)(3)(A). Generally speaking, the following shall be understood to be included within the meaning of victim if they are nationals of the United States, or officers or employees of the United States, and they suffered a direct physical or emotional injury as a result of an act of international terrorism occurring outside the United States: Individuals who were present during the act; individuals who were present during the immediate aftermath of the act; or emergency responders who assisted in efforts to search for and recover other victims.

(2) In the event that a victim, as defined in paragraph (t)(1) of this section, is under 18 years of age at the time of the act, is (at the time of or as a result of the act) incompetent or incapacitated, or dies as a result of the act, ''victim'' shall include the following members of his family: His spouse, parents, children, and siblings; or another person, at the discretion of the Director.

§ 94.13 Terms.

The first three provisions of 1 U.S.C. 1 (rules of construction) shall apply to this subpart.

Coverage

§ 94.21 Eligibility.

(a) Except as provided in paragraphs (b) and (c) of this section, reimbursement of qualified expenses under this subpart is available to a victim of international terrorism or his representative, pursuant to 42 U.S.C. 10603c(a)(3)(A). For purposes of eligibility for this program only, the Attorney General shall determine whether there is a reasonable indication that an act was one of international terrorism, within the meaning of that section.

(b) Reimbursement shall be denied to any claimant if the Director, in consultation with appropriate Department of Justice (DOJ) officials, determines that there is a reasonable indication that either the victim with respect to whom the claim is made or the claimant, was criminally culpable for the act of international terrorism.

(c) Reimbursement may be reduced or denied to a claimant if the Director, in consultation with appropriate DOJ officials, determines that the victim with respect to whom the claim is made contributed materially to his own death or injury by—

(1) Engaging in conduct that violates U.S. law or the law of the jurisdiction in which the act of international terrorism occurred;

(2) Acting as a mercenary or ''soldier of fortune'';

(3) (As a non-U.S. government employee), acting as an advisor, consultant, employee, or contractor, in a military or political capacity—

(i) For a rebel or paramilitary organization;

(ii) For a government not recognized by the United States; or

(iii) In a country in which an official travel warning issued by the U.S. Department of State related to armed conflict was in effect at the time of the act of international terrorism; or

(4) Engaging in grossly reckless conduct.

§ 94.22 Categories of expenses.

(a) The following categories of expenses, generally, may be reimbursed, with some limitations, as noted in § 94.23:

(1) Medical care;

(2) Mental health care;

(3) Property loss;

(4) Funeral and burial; and

(5) Miscellaneous expenses (including, but not limited to, temporary lodging, emergency travel, and transportation).

(b) Under this subpart, the Director shall not reimburse for attorneys' fees, lost wages, or non-economic losses (such as pain and suffering, loss of enjoyment of life, loss of consortium, etc.).

§ 94.23 Amount of reimbursement.

Different categories of expenses are capped, as set forth in the chart in the appendix to this subpart. Those caps may be adjusted, from time to time, by rulemaking. The cap in effect within a particular expense category, at the time that the application is received, shall apply to the award.

§ 94.24 Determination of award.

After review of each application, the Director shall determine the eligibility of the victim or representative and the amount, if any, eligible for reimbursement, specifying the reasons for such determination and the findings of fact and conclusions of law supporting it. A copy of the determination shall be mailed to the claimant at his last known address.

§ 94.25 Collateral sources.

(a) The amount of expenses reimbursed to a claimant under this subpart shall be reduced by any amount that the claimant receives from a collateral source in connection with the same act of international terrorism. In cases in which a claimant receives reimbursement under this subpart for expenses that also will or may be reimbursed from another source, the claimant shall subrogate the United States to the claim for payment from the collateral source up to the amount for which the claimant was reimbursed under this subpart.

(b) Notwithstanding paragraph (a) of this section, when a collateral source provides supplemental reimbursement for a specific expense, beyond the maximum amount reimbursed for that expense under this subpart, the claimant's award under this subpart shall not be reduced by the amount paid by the collateral source, nor shall the claimant be required to subrogate the United States to the claim for payment from the collateral source, except that in no event shall the combined reimbursement under this subpart and any collateral source exceed the actual expense.

Program Administration

§ 94.31 Application procedures.

(a) To receive reimbursement, a claimant must submit a completed application under this program requesting payment based on an itemized list of expenses, and must submit original receipts. In cases involving incidents of terrorism preceding the establishment of this program where claimants may not have original receipts, and in cases in which the claimant certifies that the receipts have been destroyed or lost, the Director may, in his discretion, accept an itemized list of expenses. In each such case, the claimant must certify that original receipts are unavailable and attest that the items and amounts submitted in the list are true and correct to the best of his knowledge.

(b) In the event that it is later determined that a fraudulent

certification was made, the United States may take action to recover any payment made under this section, and pursue criminal prosecution, as appropriate.

§ 94.32 Application deadline.

The deadline for an application is 3 years from the date of the act of international terrorism. At the discretion of the Director, the deadline for filing a claim may be extended to a date not later than 3 years from the date of the determination that there is a reasonable indication that an act of international terrorism has occurred, under § 94.21(a). For claims related to acts of international terrorism that occurred after December 21, 1988, but before [EFFECTIVE DATE OF THE FINAL RULE], the application deadline is 3 years from [EFFECTIVE DATE OF THE FINAL RULE].

§ 94.33 Investigation and analysis of claims.

The Director may seek an expert examination of claims submitted if he believes there is a reasonable basis for requesting additional evaluation. The claimant, in submitting an application for reimbursement, authorizes the Director to release information regarding claims or expenses listed in the application to an appropriate body for review. If the Director initiates an expert review, no identifying information for the victim or representative shall be released.

Payment of Claims

§ 94.41 Interim emergency payment.

(a) Claimants may apply for an interim emergency payment, prior to a determination under § 94.21(a). If the Director determines that such payment is necessary to avoid or mitigate substantial hardship that may result from delaying reimbursement until complete and final consideration of an application, such payment may be made to cover immediate expenses such as those of medical care, funeral and burial, short-term lodging, and emergency transportation.

(b) The amount of an interim emergency payment shall be determined on a case-by-case basis, and shall be deducted from the final award amount.

§ 94.42 Repayment and waiver of repayment.

(a) A victim or representative shall reimburse the program upon a determination by the Director that an interim emergency award or final award was—

(1) Made to an ineligible victim or claimant;

(2) Based on fraudulent information; or

(3) An overpayment.

(b) Except in the case of ineligibility pursuant to a determination by the Director, in consultation with appropriate DOJ officials, under § 94.21(b), the Director may waive such repayment requirement in whole or in part, for good cause, upon request.

Appeal Procedures

§ 94.51 Request for reconsideration.

A victim or representative may, within 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 forthe findings of fact and conclusions of law supporting his determination.

Appendix to Subpart A of Part 94

International Terrorism Victim Expense Reimbursement Program (ITVERP); Proposed Chart of Expense Categories and Limits

There are five major categories of expenses for which claimants can seek reimbursement under the ITVERP: Medical, including dental and rehabilitation costs; mental health care; property loss, repair, and replacement; funeral and burial costs; and miscellaneous expenses.

Expense categories	Subcategories and conditions	Expense limits
(a) Medical expenses, including dental and rehabilitation costs.	Victim's medical care, including treatment, cure, and mitigation of disease or injury; replacement of medical devices, including, but not limited to, eyeglasses or other corrective lenses, dental services, prosthetic devices, 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; workplace, vehicle, and home modifications. For example, if a victim sustains a physical injury, such as blindness or paralysis which would impact his ability to perform current professional duties, physical rehabilitation to address work skills is appropriate.	Up to $50,000.
(b) 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.

Expense categories	Subcategories and conditions	Expense limits
(c) 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.
(d) Funeral and burial costs	Includes 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.
(e) Miscellaneous expenses	Temporary lodging up to 30 days, local transportation, telephone costs, etc. Emergency travel: two family members' transportation costs to country where incident occurred 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.

Subpart B—[Reserved]

Subpart C—[Reserved]

Subpart D—[Reserved]

Regina B. Schofield,

Assistant Attorney General, Office of Justice Programs.

[FR Doc. 05–16495 Filed 8–23–05; 8:45 am]

BILLING CODE 4410–18–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[R04–OAR–2003–KY–0001–200410(b); FRL–7958–7]

Approval and Promulgation of Implementation Plans for Kentucky: Regulatory Limit on Potential To Emit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the State Implementation Plan (SIP) of the Commonwealth of Kentucky which incorporates Kentucky rule 401 KAR 52:080 into the Kentucky SIP. The Commonwealth submitted the revision on October 31, 2003. This rule affects sources whose actual emissions are less than 50 percent of the major source threshold whereas the sources' potential to emit (PTE) exceeds the major source threshold. The EPA is also notifying the public that the Agency's conditional approval of Kentucky rule 401 KAR 52:080, as submitted on March 15, 2001, and published on August 15, 2002, is disapproved as of October 15, 2003. In the Final Rules section of this **Federal Register**, the EPA is approving the Commonwealth's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before September 23, 2005.

ADDRESSES: Submit your comments, identified by Regional Material in EDocket (RME) ID No. R04–OAR–2003–KY–0001, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.

2. *Agency Website: http://docket.epa.gov/rmepub/* RME, EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select ''quick search,'' then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

3. *E-mail: notarianni.michele@epa.gov.*

4. *Fax:* (404) 562–9019.

5. *Mail:* ''R04–OAR–2003–KY–0001,'' Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

6. *Hand Delivery or Courier:* Deliver your comments to: Michele Notarianni, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division 12th floor, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to RME ID No. R04–OAR–2003–KY–0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://docket.epa.gov/rmepub/*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through RME, regulations.gov, or e-mail. The EPA RME website and the federal regulations.gov website are ''anonymous access'' systems, which