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Part II

Department of the Treasury

31 CFR Part 50
Terrorism Risk Insurance Program; Proposed Rules

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AC53

Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing these proposed rules to implement changes to the Terrorism Risk Insurance Program (TRIP or Program) required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act). In addition, Treasury proposes for the first time a Civil Penalties rule under TRIP, pursuant to authority granted by Congress in the Terrorism Risk Insurance Act of 2002 (TRIA). Treasury also proposes adoption, with certain minor changes, of a previously proposed rule addressing the Final Netting of Payments. Finally, certain other changes are proposed to various sections of the prior rules in order to clarify certain matters, make technical and conforming changes, and to address changes required by the passage of time and other legislation.

DATES: Written comments must be submitted on or before May 31, 2016. Early submissions are encouraged.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to the Federal Insurance Office, Attention: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''2015 TRIA Reauthorization Proposed Rules Comments.'' Please include your name, group affiliation, address, email address, and telephone number(s) in your comment. Where appropriate, a comment should include a short Executive Summary (no more than five single-spaced pages).

In general, comments received will be posted on *http://www.regulations.gov* without change, including any business or personal information provided. Comments received, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202–622–2922 (not a toll free number) or Kevin Meehan, Policy Advisor, Federal Insurance Office, 202–622–7009 (not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (the Act or TRIA) [1] was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events. TRIA requires insurers to ''make available'' terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Secretary of the Treasury (Secretary) administers the Program, including the issuance of regulations and procedures. Pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Insurance Office assists the Secretary in administering the Program.[2]

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has issued interim guidance to be relied upon by insurers until superseded by regulations. To date, rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, are found in Subparts A, B, and C of 31 CFR part 50.[3] Treasury's rules applying provisions of the Act to state residual market insurance entities and state workers' compensation funds are set forth in Subpart D of 31 CFR part 50.[4] Rules concerning claims procedures governing payment of the Federal share of compensation for insured losses are currently found at subpart F of 31 CFR part 50.[5] Subpart G of 31 CFR part 50 currently contains rules on audit and recordkeeping requirements for insurers,[6] while Subpart H of 31 CFR part 50 currently addresses recoupment and surcharge procedures.[7] Finally, Subpart I of 31 CFR part 50 currently contains rules implementing the litigation management provisions of TRIA,[8] and Subpart J of 31 CFR part 50 currently addresses rules concerning the cap on annual liability established under TRIA.[9]

The Program has been reauthorized three times. On December 22, 2005, the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–444, 119 Stat. 2660) (2005 Extension Act) was enacted, which extended the Program through December 31, 2007. In addition to extending the duration of the Program, the 2005 Extension Act also eliminated certain lines of insurance from the Program, revised the insurer deductible, Federal share, and recoupment provisions of the Program, and introduced the ''Program Trigger'' as a threshold that must be met before any Federal payments can be made. Rules implementing these changes were issued by Treasury.[10]

On December 26, 2007, the Terrorism Risk Insurance Program Reauthorization

[1] Public Law 107–297, 116 Stat. 2322, codified at 15 U.S.C. 6701, note. Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, of the United States Code, the provisions of TRIA are identified by the sections of the law.

[2] 31 U.S.C. 313(c)(1)(D).

[3] See 68 FR 9804 (Feb. 28, 2003) (Program definitions (Interim Final Rule)); 68 FR 19302 (April 18, 2003) (disclosure and mandatory availability requirements (Interim Final Rule)); 68 FR 41250 (July 11, 2003) (Program definitions (Final Rule)); 68 FR 48280 (Aug. 13, 2003) (''direct earned premium'' definition (Final Rule)).

[4] See 68 FR 19309 (Apr. 18, 2003) (residual market entities and state compensation funds (Notice of Proposed Rulemaking)); 68 FR 59715 (Oct. 17, 2003) (residual market entities and state compensation funds (Final Rule)).

[5] See 68 FR 67100 (Dec. 1, 2003) (claims procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (June 29, 2004) (claims procedures (Final Rule)); 70 FR 2830 (Jan. 18, 2005 (timing of affiliation for purposes of claims payments (Notice of Proposed Rulemaking)); 70 FR 34348 (June 14, 2005) (timing of affiliation for purposes of claims payments (Final Rule)).

[6] See 68 FR 67100 (Dec. 1, 2003) (audit and investigative procedures (Notice of Proposed Rulemaking)); 69 FR 39296 (audit and investigative procedures (Final Rule)).

[7] See 73 FR 53798 (Sept. 17, 2008) (recoupment and surcharge procedures (Notice of Proposed Rulemaking)); 74 FR 66051 (Dec. 14, 2009) (recoupment and surcharge procedures (Final Rule)).

[8] See 69 FR 25341 (May 6, 2004) (Federal cause of action and settlement approval provisions (Notice of Proposed Rulemaking)); 69 FR 44932 (July 28, 2004) (Federal cause of action and settlement approval provisions (Final Rule)).

[9] See 73 FR 56767 (Sept. 30, 2008) (cap on annual liability (Notice of Proposed Rulemaking)); 74 FR 66061 (Dec. 14, 2009) (cap on annual liability (Final Rule)).

[10] See 71 FR 648 (Jan. 5, 2006) (Notice providing Interim Guidance regarding 2005 Extension Act revisions to TRIA); 71 FR 27564 (May 11, 2006) (Interim Final Rule concerning 2005 Extension Act revisions); 71 FR 50341 (Aug. 25, 2006) (Final Rule concerning 2005 Extension Act revisions).

Act of 2007 (Pub. L. 110–160, 121 Stat. 1839) (2007 Reauthorization Act) was enacted, extending the Program through December 31, 2014. In addition to extending the duration of the Program, the 2007 Reauthorization Act modified the ''act of terrorism'' definition to eliminate the requirement that the act of terrorism be committed by an individual acting on behalf of any foreign person or interest, revised the insurer deductible, Program Trigger, and Federal share provisions of the Program, modified the recoupment provisions, and established various reporting requirements. Again, rules implementing these changes were issued by Treasury.[11]

Most recently, on January 12, 2015, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act),[12] reauthorizing the Program until December 31, 2020. The 2015 Reauthorization Act reformed various operational matters respecting the Program. These reforms include technical changes to the disclosure requirements, certain definitional changes, and modifications involving the amount and application of the Program Trigger, the Federal share of compensation, the recoupment percentage amount, and the insurance marketplace aggregate retention amount—all of which require modifications to the existing Program regulations.[13] In addition, the 2015 Reauthorization Act mandates other actions by Treasury and changes to TRIP that in turn necessitate changes to the existing Program regulations, requiring Treasury: (1) To issue final rules following the submission of a mandated report on improving the certification process; [14] (2) to collect certain information from insurers participating in the Program so that Treasury can complete periodic reports concerning the effectiveness of the Program and trends over time; and (3) to define small insurers by regulation, conduct periodic studies concerning any competitive challenges small insurers face in the terrorism risk insurance marketplace, and submit periodic reports on the findings.

Additionally, Treasury proposes new regulations respecting civil penalties (as provided for in TRIA) and the final netting of claims for a calendar year,[15] and implements certain other changes to eliminate provisions that are redundant in light of the passage of time, and/or to clarify the intent of the regulation.

Finally, Treasury poses several questions regarding the role of self-insurance arrangements and captive insurers in the Program, to which we seek comments to use in formulating a proposed rule in the near future concerning the participation of such arrangements in the Program.

The changes are explained in further detail below in the context of the proposed rules. For the convenience of the reader, Treasury is restating Part 50 in its entirety. However, this preamble addresses only those portions of Part 50 that are being amended. For discussion of Part 50 as previously codified, see the relevant **Federal Register** notices mentioned above.

II. The Proposed Rules

This proposed rule would strike and replace existing 31 CFR part 50 in its entirety, with the principal changes being to: (1) Generally revise 31 CFR part 50 to incorporate new financial and operational provisions for the Program contained in the 2015 Reauthorization Act; (2) add a new Subpart F to Part 50, which comprises Treasury's regulations concerning data collection; and (3) add a new Subpart G to Part 50, which comprises Treasury's regulations concerning the certification process. The proposed rules also add certain definitions in § 50.4 of Subpart A, a new § 50.76 addressing the previously proposed Final Netting rule, and a new § 50.82 addressing Civil Penalties. Other changes providing further clarification and eliminating redundancies are identified and discussed further below.

A. Overview

The Program was established in 2002, and has been reauthorized and extended on three occasions since then—in 2005, 2007, and most recently in January 2015. Each reauthorization and extension changed the operational provisions of the Program. In prior rulemakings, Treasury has sought to address such changes by incorporating provisions in the rules reflecting the different approaches depending upon the timing of any particular certified act of terrorism. While this approach has captured the relevant changes over time, it has resulted in a set of rules that incorporated numerous exceptions and qualifications. As a result, many existing provisions in the rules have been rendered effectively obsolete given the passage of time. Accordingly, Treasury is taking the opportunity during this rulemaking to propose a more general revision to Part 50, which describes the Program as it currently operates and will operate through 2020, without cumbersome reference to differences that were in effect prior to the effective date of the proposed rules. The revised rules remain subject to the existing savings provision (proposed § 50.6, current § 50.7) which confirms that, to the extent prior applicable regulations or guidance remain relevant for any reason at some point in the future, such provisions will continue to provide the rule of decision, and to provide a safe harbor, for insurers participating in the Program.

In addition to instituting changes to the basic financial terms that define the operation of the Program, the 2015 Reauthorization Act also requires Treasury to prepare certain reports concerning the operation of the Program, based upon data which Treasury shall collect, and to generate rules concerning improvements to the certification process. The proposed rules define a data collection process that will allow Treasury to collect the information necessary to satisfy the reporting requirements contained in the 2015 Reauthorization Act, in a format consistent with the manner in which insurers presently collect and report financial data, including data concerning terrorism risk insurance. These rules, and the specific data collection elements, which remain under development and subject to further refinement, are the result of extensive and ongoing interaction among Treasury, industry stakeholders, and state regulators.

The proposed rules concerning the certification process follow Treasury's October 2015 Certification Report. As set forth in the Certification Report, Treasury has determined that it is not practical to establish detailed rules—and particularly a timeline—governing a process that will necessarily vary from case to case, although Treasury's proposed rules do identify the relevant timing considerations as to when an act is eligible for certification by the

[11] See 73 FR 5264 (Jan. 29, 2008) (Notice providing Interim Guidance regarding 2007 Reauthorization Act revisions); 73 FR 53359 (Sept. 16, 2008) (Interim Final Rule regarding 2007 Reauthorization Act revisions); 74 FR 18135 (Apr. 21, 2009) (Final Rule regarding 2007 Reauthorization Act revisions).

[12] Public Law 114–1, 129 Stat. 3.

[13] Treasury issued a Notice providing interim guidance concerning application of disclosure requirements in light of the enactment of the 2015 Reauthorization Act. 80 FR 6656 (Feb. 6, 2015).

[14] U.S. Department of the Treasury, *The Process for Certifying an ''Act of Terrorism'' under the Terrorism Risk Insurance Act of 2002* (October 2015) (Certification Report), *available at http://www.treasury.gov/initiatives/fio/reports-and-notices/Documents/2015%20Report%20on%20the%20Certification%20Process%20under%20the%20Terrorism%20-%20Production%20Version.pdf.*

[15] The regulations relating to final netting of claims are a modification of a Final Netting of Payments rule proposed and subject to comment in 2010 but not adopted by Treasury. See 75 FR 45563 (Aug. 3, 2010).

Secretary as an act of terrorism. In addition, the certification process can and generally should incorporate improved notification and communication by Treasury to the public once an act is under consideration for certification by the Secretary as an ''act of terrorism.'' The proposed rules provide for public notifications and updates, as may be necessary, concerning the existence, continuation, and conclusion of the certification process.

Finally, the proposed rules also include a modified version of a previously proposed Final Netting Rule, which was subject to comment in 2010 but never adopted as a final rule by Treasury, and a rule respecting civil penalties—authorized by TRIA as originally enacted in 2002, but never previously proposed by Treasury.

Treasury seeks comment on all aspects of the proposed rules from interested persons and entities.

B. Description of the Proposed Rules

The changes to the existing rules as provided for in these proposed rules, on a section by section basis, are as follows:

Subpart A—General Provisions

The proposed change to § 50.1 adds the statutory authority extended under the 2015 Reauthorization Act. The proposed change in § 50.2 implements the provision of the Dodd-Frank Wall Street Reform and Consumer Protection Act authorizing the Federal Insurance Office to assist the Secretary of the Treasury in the administration of TRIP.[16]

There are a number of changes to Program definitions. The proposed change in § 50.4(b) implements Section 105 of the 2015 Reauthorization Act, providing that the Secretary will consult with the Attorney General of the United States and Secretary of Homeland Security prior to certifying an act as an act of terrorism, rather than reaching a certification decision in concurrence with the Secretary of State and the Attorney General.

The proposed change in § 50.4(c)(2) implements the rule of construction in Section 106 of the 2015 Reauthorization Act, which provides that control for purposes of determining if an insurer is an ''affiliate'' under TRIA is not established solely because an entity acts as an attorney-in-fact for a another entity that is a reciprocal insurer.

The proposed changes in § 50.4(f) (defining ''attorney-in-fact'') and § 50.4(x) (defining ''reciprocal insurer'') are required in light of the new rule of construction in § 50.4(c)(2) required by Section 106 of the 2015 Reauthorization Act, discussed above. In both cases, Treasury has relied upon state law in developing these definitions.

The proposed change in § 50.4(g) defines ''captive insurer'' for purposes of implementing TRIA. This definition is being adopted now in order to give effect to the proposed exclusion in § 50.4(z) of captive insurers from the definition of ''small insurer,'' and because captive insurers might be subject to different data collection protocols than other insurers, both discussed further below. Treasury continues to reserve subpart E of 31 CFR part 50 for further regulations concerning the participation of captive insurers in the Program.

The proposed change in § 50.4(m) incorporates the changes to the insurance marketplace aggregate retention amount over the period from 2015 to 2020, as provided for in Section 104 of the 2015 Reauthorization Act. This section sets the insurance marketplace aggregate retention amount at $27.5 billion, and requires it to increase by $2 billion every calendar year beginning with the year of enactment of the 2015 Reauthorization Act, until the amount reaches $37.5 billion, which will occur in 2019. Section 50.4(m) also specifies the manner in which Treasury proposes to determine the insurance marketplace aggregate retention amount for any calendar year beginning with 2020 and publicize such determinations, in accordance with requirement in Section 104 of the 2015 Reauthorization Act to issue rules for determining and publicizing this amount. The approach follows the direction in the 2015 Reauthorization Act that the insurance marketplace aggregate retention amount for any calendar year after the Program Trigger reaches $37.5 billion should be based upon the average of insurer deductibles during the three prior calendar years. It calculates this figure by reference to the data that Treasury will be collecting concerning insurer participation in the Program under proposed § 50.51.

The proposed change in § 50.4(n) is for clarification purposes only and is not intended to change the prior approach, which was to confirm that outside the United States (as distinguished from inside the United States) insured losses under TRIP involving an air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States) are limited to the insurance coverage provided to the air carrier or vessel.

The proposed change in § 50.4(v) incorporates the changes to the amount of the Program Trigger over the period from 2015 to 2020, and specifies that the Program Trigger is based on all acts of terrorism certified by the Secretary in a particular calendar year (as distinguished from each ''Program Year''), as provided for in Section 103 of the 2015 Reauthorization Act.

The proposed change in § 50.4(z) defines ''small insurer'' as required under Section 112 of the 2015 Reauthorization Act for purposes of a study of small insurers participating in the Program that Treasury must conduct. The purpose of the study is to identify any competitive challenges small insurers face in the terrorism risk insurance marketplace—including whether the increase in amount of the Program Trigger has affected small insurers. Treasury proposes a sliding scale definition of a ''small insurer''—which tracks the increasing amount of the Program Trigger in the years from 2015 to 2020—by reference to both the insurer's direct earned premium (for TRIA-eligible lines) and policyholder surplus. Treasury has selected this proposed definition of ''small insurer'' for purposes of TRIP in light of the manner in which the Program operates.

An insurer's deductible under TRIP is 20 percent of the insurer's direct earned premium in the prior calendar year. Assuming the Program Trigger has been met—an amount of aggregate insured losses in excess of a defined amount in a particular calendar year (starting with $100 million in 2015 and ultimately increasing to $200 million by 2020)—Treasury will make payment of the Federal share for amounts in excess of any particular insurer's deductible.

The Program Trigger is based upon the insured losses of all participants in the Program and, therefore, a particular insurer with losses below the Program Trigger but above its deductible may still be entitled to payments of the Federal share, so long as insured losses of all participating insurers are sufficient to satisfy the Program Trigger. A different situation, however, could be presented if losses arising from a certified act of terrorism are largely or entirely sustained by a single insurer whose deductible is below the Program Trigger. In this situation, an insurer with a deductible of (for example) $20 million, and total losses of $50 million would not be entitled to payments under the Program (notwithstanding satisfaction of its deductible) if total insured losses across all Program

[16] 31 U.S.C. 313(c)(1)(D).

participants in this hypothetical were, say, only $60 million in total.

If an insurer's direct earned premium is five times the Program Trigger amount (for example, at $500 million in 2015) that insurer's deductible would at least exceed the Program Trigger, even if all of the insured losses in question (a theoretical if unlikely possibility) resulting from a certified act of terrorism were sustained only by that insurer. Such an insurer would be paid any Federal share above its deductible, since that insurer's deductible would be equal to the Program Trigger for the calendar year in question. If an insurer's direct earned premium is less than five times the Program Trigger amount, however, the possibility remains that an insurer might exceed its deductible but not be entitled to payments of the Federal share because the Program Trigger has not been met. The impact upon such an insurer in this situation, however, would be lessened to the extent the insurer's policyholder surplus was sufficient to satisfy any amounts that would not be reimbursed in such a scenario under the Program.

Since the purpose of studying small insurers under TRIP is to assess competitive challenges small insurers face in the terrorism risk insurance marketplace, the definition should be with reference to the insurer's deductible and policyholder surplus as compared with the Program Trigger threshold. Accordingly, Treasury's proposed definition specifies that a ''small insurer'' is an insurer with prior-year direct earned premium of less than five times the Program Trigger amount, and with policyholder surplus at the end of the prior calendar year that is also less than five times the Program Trigger amount. Insurers larger than this—whose losses alone could trigger the Program, or whose surplus is well above the Program Trigger threshold—cannot be considered ''small'' for these purposes.

Finally, captive insurers (as defined in this proposed rule) are exempted from the small insurer definition. Captive insurers typically insure only the exposures of corporate parents or of other related policyholders, and thus while these captives might otherwise meet the proposed definition of ''small insurer'' the establishment of a captive insurer is a risk management decision that is not compelled by TRIP, and the corporate parent or other source of strength of the captive insurer is ultimately positioned to manage any potential risk presented to the captive by its participation in TRIP. Any issue relating to the size of captive insurers as it relates to TRIP should be assessed in the context of regulations specifically applicable to such captives.

The balance of the proposed changes to Subpart A would delete provisions that are redundant or unnecessary on account of the passage of time, would substitute language to clarify Treasury's intent, or would implement other changes required by the 2015 Reauthorization Act (*e.g.,* the movement from the term ''Program Year'' to the term ''calendar year'' to describe the operation of TRIP).

Subpart B—Disclosures as Conditions for Federal Payment

The proposed change to § 50.12 clarifies the manner in which the portion or percentage of the annual premium attributable to terrorism risk insurance should be disclosed to policyholders or potential policyholders, to ensure that the actual dollar value of the premium is evident.

The proposed changes to § 50.13 implement Section 106(2)(A) of the 2015 Reauthorization Act, which deleted the previous requirement that the general disclosure requirements respecting insured losses (as found in § 50.10) apply at the time of policy purchase, as well as at the time of offer and renewal.

The proposed change to § 50.15 provides expanded guidance for ensuring compliance with the requirement that the cap disclosure be provided at the time of offer, purchase, and renewal. It clarifies that a cap disclosure at the time of purchase needs only to be provided in the event that terrorism risk coverage is actually purchased, and establishes that the disclosure at that time may refer back to the disclosure made at the time of offer or renewal. This guidance is otherwise consistent with the general approach of the 2015 Reauthorization Act to notification requirements.

The balance of the proposed changes to Subpart B would delete provisions that are redundant or unnecessary on account of the passage of time, substitute language to clarify Treasury's intent, or implement other minor changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act.

Subpart C—Mandatory Availability

The proposed changes to Subpart C would delete provisions that are redundant or unnecessary on account of the passage of time, substitute language to clarify Treasury's intent, or implement other minor changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any further substantive changes.

Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

No substantive changes have been proposed to Subpart D.

Subpart E—Self-Insurance Arrangements; Captives [Reserved]

Treasury continues to reserve Subpart E for future additional rules addressing the participation in TRIP of self-insurance arrangements and captive insurers. Comments concerning the participation in the Program of self-insurance arrangements and captive insurers are sought in Section III, below.

Subpart F—Data Collection

Subpart F is new. The proposed rules establish procedures for collection of data as mandated by Section 111 of the 2015 Reauthorization Act, and also address the collection of data by Treasury in connection with the claims process, in the event that an act of terrorism has been certified. A general explanation of each section of new Subpart F follows.

Proposed § 50.50 states that Treasury may generally request information from insurers in connection with the Program, as part of its administration and implementation of the program.

Proposed § 50.51 establishes rules concerning the annual collection of data by Treasury concerning the effectiveness of the Program, as mandated by Section 111 of the 2015 Reauthorization Act. A reporting deadline each year of March 1 is proposed. Treasury has proposed this reporting deadline to provide insurers with sufficient time to compile and provide the necessary information and ensure it is true and correct. A March 1 deadline is also consistent with other annual reporting requirements insurers must meet. The subject matter of the data to be collected is identified consistent with the requirements of Section 111 of the 2015 Reauthorization Act. The rule further specifies that the data will be collected electronically by Treasury, through various forms and web portals identified on Treasury's Web site. The reporting forms and portals, which will identify the specific data elements that insurers will be required to provide on an annual basis, are under development and will be published for comment separately. Given that insurers collect and report data in a variety of ways, the precise data elements, instructions, and methods of reporting may vary by industry segment. Treasury will publish

multiple forms if it identifies a need and will provide clear guidance for insurers to determine the appropriate forms to submit. The proposed rule also provides for periodic reevaluation of and revisions to the data elements to be collected, so that ongoing refinements to the process can be implemented. Treasury has proposed a 90 day notice period for any refinements, to provide insurers with sufficient time to update any systems they will need to change to facilitate collection of the new data.

The proposed rule also permits Treasury to issue supplemental data requests to participating insurers to the extent Treasury determines it requires additional or clarifying information in order to analyze the effectiveness of the Program. Like the potential revision to the annual data element requirements, this is an additional tool for Treasury to manage the information it is collecting to ensure that it is able to evaluate the effectiveness of the Program, as required by the 2015 Reauthorization Act. The timeframe and manner of response to any such supplemental data request will be specified by Treasury in the request.

The proposed rule permits—but does not require—Treasury to exclude small insurers, as defined in proposed § 50.4(z), from the annual data request. Section 111 of the 2015 Reauthorization Act requires the Secretary to collect from insurers participating in the Program such information as the Secretary considers appropriate to analyze the overall effectiveness of the Program. Treasury may gather all of the information appropriate for analyzing the effectiveness of the Program without requiring collection of information from every single participating insurer. The statutory text does not require the Secretary to require all insurers participating in the Program to submit information, nor does it require that all insurers be required to submit the same information. Rather, the statute requires the Secretary to require insurers to submit such information as the Secretary considers appropriate. Therefore, the Secretary may sometimes exempt a small insurer or class of small insurers if such exemption would not interfere with Treasury's ability to analyze the effectiveness of the Program. It would not be appropriate to extend such an exemption to insurers that do not qualify as small insurers, as such an exemption would be more likely to have a negative impact on Treasury's ability to analyze the effectiveness of the program.

Proposed § 50.52 addresses the collection of data relating to small insurers, as defined in proposed § 50.4(z), in support of the studies of small insurers mandated by the 2015 Reauthorization Act. The data elements specified in the proposed § 50.52 are those specified in Section 112 of the 2015 Reauthorization Act.

Proposed § 50.53 establishes rules for the collection of data by Treasury once an act has been certified as an act of terrorism, under Treasury's general authority to under Section 104(a) of the Act to investigate claims under the Program and prescribe regulations to effectively administer the Program and ensure that all insurers that participate in the Program are treated equally. In order to effectively administer the Program, Treasury requires information regarding losses resulting from a certified act of terrorism and has accordingly previously adopted rules requiring the submission of such information. The current rules (§ 50.52) do not require insurers to begin reporting information to Treasury concerning losses resulting from a certified act of terrorism until a particular insurer's paid and incurred losses reach 50 percent of the insurer's TRIA deductible. However, given the size of the deductibles of some participating insurers, this could result in losses being paid and reserved by industry as a whole in an amount far in excess of the $100 million Program Trigger before Treasury has obtained any specific information respecting losses resulting from the act of terrorism as they are incurred. This new section provides for periodic reporting of claims and loss information associated with the act of terrorism in question, so that Treasury may evaluate on a continuing basis the amount of loss associated with the certified act of terrorism, and be prepared in advance to respond to claims for payment of the Federal share of compensation in a timely fashion. The data elements sought under this rule are consistent with those that each participating insurer will be generating in connection with its own establishment, review, and resolution of claims as they are processed. As in other situations involving data collection, the rule specifies that Treasury may also seek loss figures and estimates from other sources in order to inform its analysis and projections.

Finally, proposed § 50.54 implements the requirements found in Section 111 of the 2015 Reauthorization Act, which recognize that the data that Treasury will need to collect from participating insurers may constitute proprietary information that is highly sensitive to the individual companies (and, potentially, underlying policyholders and claimants) from which it is obtained. The proposed rule provides for protection of such data from disclosure, although it does permit—pursuant to appropriate agreements—for the sharing of such information with other Federal agencies or state insurance regulatory authorities.

Subpart G—Certification

Subpart G is new. The proposed rules establish procedures applicable when Treasury is considering whether an act constitutes an ''act of terrorism'' within the meaning of TRIA.

The 2015 Reauthorization Act includes a requirement for Treasury to conduct and complete a study on the certification process, including examination of whether a timeline governing the certification process could be established, information that the Secretary would evaluate during the certification process, and the ability of the Secretary to provide guidance and updates to the public during the certification process. In the Certification Report, Treasury concluded that it would be impractical to establish very specific rules to define a process that will likely vary greatly in material respects depending upon the act and its consequences. Treasury determined, however, that the certification process could be improved by periodic reporting to the public during the pendency of that process, which Treasury concluded should permit relevant stakeholders and the public at large to assess their positions as they might be affected by the Secretary's decision whether to certify an act as an act of terrorism. Treasury also addressed in the Certification Report the types of information that it might need to evaluate during the certification process. Under the 2015 Reauthorization Act, Treasury must issue final rules governing the certification process within 9 months after the Certification Report, including a timeline for when an act is eligible for certification by the Secretary as an act of terrorism. These proposed rules implement Treasury's recommendations in its Certification Report and the requirements of the 2015 Reauthorization Act.

Proposed § 50.60 sets forth the general parameters of the certification process, as required under TRIA, and as modified by the 2015 Reauthorization Act, including the requirement in paragraph (b) that from a timing standpoint an act is eligible for certification once the Secretary has consulted with the Attorney General of the United States and the Secretary of Homeland Security.

Proposed § 50.61 addresses the commencement of the certification

process and public communication concerning the process. After the Secretary commences consideration of whether an act may be an act of terrorism under TRIA, Treasury will publish a statement and a notice in the **Federal Register** advising that the act is under consideration for certification. Such notice could also reflect that it has been determined that a particular act is not under consideration as an act of terrorism. The proposed rule provides that such notice will be updated periodically by Treasury as long as the act is still under review for certification. In addition to indicating whether the act remains under consideration for certification, the proposed rule provides that Treasury may publish further information in connection with such notifications. Nothing in the proposed notification provisions, however, precludes the Secretary from certifying an act as an act of terrorism before any notification to the public.

Proposed § 50.62 establishes rules for the collection of data by Treasury in aid of the certification process. As explained in the Certification Report, Treasury may need to collect data from insurers, as well as from other entities in the insurance industry, in connection with its analysis of whether the insurance losses resulting from an act under consideration for certification as an act of terrorism meet the $5 million loss threshold under TRIA, which must be met before any act is eligible for certification as an act of terrorism.[17] This information may therefore be crucial for informing a certification decision. Accordingly, Treasury proposes this section under its general authority to promulgate rules for effective administration of the Program and its authority to issue rules governing the certification process pursuant to Section 107(e) of the 2015 Reauthorization Act. Treasury may need to rely upon insurers who have or project losses from the act in question in order to confirm whether the relevant loss threshold is or will be satisfied. An insurer that has such information may also self-report to Treasury, as further provided in the rule, and Treasury may also review other industry sources for such loss information.

Proposed § 50.63 provides for **Federal Register** notification and other communication of any certification decision, as well separate notifications to Congress and specified insurance supervisory authorities.

[17] TRIA, Section 102(1)(B)(ii).

Subpart H—Claims Procedures

The proposed changes to § 50.70 (formerly § 50.50) implement the changes to the Federal share of compensation and Program Trigger amounts in the years from 2015 through 2020, as provided for in the 2015 Reauthorization Act.

Proposed § 50.76 addresses final netting. This rule was originally proposed by Treasury in 2010 and subject to comment but was not adopted by Treasury. See generally 75 FR 45563 (August 3, 2010). The intent of the proposed rule is to provide a process by which Treasury would close out its claims operation for insured losses from a particular calendar year. The proposed rule provides for some flexibility in how and when steps are taken to accomplish this in order to be able to effectively address future circumstances. Treasury has addressed certain of the comments that were received during the prior comment period by modifications to the proposed rule, and responds to certain of the comments that are not addressed by revisions to the proposed rule. Interested parties are invited to provide further comments respecting the proposed final netting rule during the current comment period.

Section 103(e)(4) of TRIA provides the Secretary with the sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall be accomplished. Based on that authority, the final netting rule provides the mechanism for final payments to be made by Treasury to insurers, or by insurers to Treasury, such that Treasury can close out its claims operation for insured losses for a given calendar year, once the Secretary has determined that claims for the Federal share of compensation shall be considered final.

The substantive modifications to the proposed rule as originally proposed in 2010 are to paragraph (b)(1)(v) (identifying the manner in which the Federal courts have been applying tort and contract statute of limitations as such decisions may be relevant to the final netting analysis) and paragraph (b)(1)(ix) (expressly requiring that if it is projected that the cap on annual liability will be reached, consideration shall be given as to whether any Final Netting Date should be set) are based on the comments that were previously received. Treasury concurs with the commenters that these are appropriate considerations for Final Netting. Treasury has not, however, revised the proposed rule in response to comments recommending that Treasury should not impose a commutation over the objection of the relevant insurer, or that Treasury should expressly obligate itself to reopen and/or extend the insurer's claim for the Federal share of compensation if the 20 percent exception threshold of increased compensation is met. Treasury makes payment of the Federal share of compensation pursuant to the terms of TRIA and not as a matter of contract, and TRIA leaves to the sole discretion of the Secretary—who must consider the impact of the Program upon taxpayers as well as upon the participating insurers—when claims shall become final. The considerations identified in the proposed rule as to whether and when a Final Netting Date should be set are appropriate and sufficiently identify the relevant considerations.

The balance of the proposed changes to the previously proposed Final Netting Rule text revise certain terminology previously used in the regulations, in order to distinguish the provisions from the new proposed rule, or to implement other technical changes that conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any substantive changes.

Subpart I—Audit and Investigative Procedures

The only substantive change to Subpart I (formerly Subpart G) is new § 50.82, addressing civil penalties in connection with TRIA. The authority for Treasury to impose civil penalties against an insurer in connection with the administration of TRIA is provided under Section 104(e) of the Act. The proposed rule tracks the statutory language as to the situations in which a civil penalty may be assessed, and provides (as required by the Act) for any penalty to be assessed only after proceedings on the record and after an opportunity is extended to the insurer in question for a hearing. Treasury previously considered a different penalty rule, addressing only certain conduct in connection with the Program; that proposed rule was withdrawn in light of comments that the authority generally available under Section 104(e) of the Act ''cover[s] the landscape of potential offenses.'' 69 FR 39296, 39299–300 (June 29, 2004). This proposed rule is consistent with the statutory authority provided to Treasury under the Act.

The only substantive change from the civil penalty authority as identified in Section 104(e) of TRIA is with respect to the amount, which has been increased from not more than $1,000,000 as provided for in TRIA to not more than $1,325,000. This increase

is based on the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, which requires (in Section 5 of that Act) that civil penalties be increased by the percentage difference in the Consumer Price Index (CPI) for June of the year in which the penalty was originally established (here, June 2002) versus June of year in which the penalty is readjusted, or June 2015. In June 2002, the CPI was 179.9, and in June 2015 the CPI was 238.638—an increase of 58.738, which is a percentage increase from June 2002 of 32.65%. This results in an increased penalty of $1,326,503 which, according to Section 4 of the Act, is to be rounded to the nearest $25,000 in the case of penalties in excess of $200,000. This results in the current figure of $1,325,000.

Subpart J—Recoupment and Surcharge Procedures

The principal changes in Subpart J are in connection with proposed § 50.90 (formerly § 50.70), and are based upon changes to the Program adopted in the 2015 Reauthorization Act—*i.e.,* the increase, from 133 percent to 140 percent, in the amount of terrorism loss risk-spreading premiums to be applied to any mandatory recoupment amount, and the revised schedule for the collection of terrorism loss risk-spreading premiums, depending upon the timing of any certified act of terrorism. The balance of the proposed changes to Subpart J make certain clarifying changes and otherwise conform the existing regulations to the requirements of the 2015 Reauthorization Act, and do not seek to establish any further substantive changes.

Subpart K—Federal Cause of Action; Approval of Settlements

The proposed Rule incorporates certain changes and clarifications to Subpart K, involving the Federal Cause of Action and Approval of Settlements by Treasury. These changes are designed to enhance Treasury's ability to evaluate and manage significant claims that could have a material impact upon Treasury's payment of the Federal share of compensation.

Proposed § 50.100(b) is proposed for the sake of completeness and tracks the existing requirement identified in TRIA that once the Secretary certifies an act of terrorism the Judicial Panel on Multidistrict Litigation shall designate one or more district courts to exercise exclusive jurisdiction of claims arising out of the certified act of terrorism. See TRIA, Section 107(a)(4).

Proposed § 50.102 (formerly § 50.82) includes certain clarifying language confirming that the advance settlement approval requirement extends to claims that may ultimately be determined to fall within an insurer's deductible. Insured losses are ultimately submitted to Treasury as the basis for payment of the Federal share on an aggregate basis and, therefore, Treasury has previously recognized that the advance settlement approval requirement logically extends to such cases. See 69 FR 44932, 44936 (July 29, 2004). This proposed change thus only clarifies existing guidance.

Proposed § 50.103 (formerly 50.83) contains certain clarifying language respecting the submission of information Treasury seeks in support of settlement approval.

Proposed § 50.104 (formerly § 50.84) adds a provision recognizing that while the Government's subrogation rights arising from TRIP payments may not be waived by a participating insurer, those rights might not be enforced by the Government in an appropriate situation. While the general regulatory prohibition against impairing the subrogation rights of the United States remains in place, Treasury recognizes that there may be litigation situations—for example, when all parties involved may ultimately be seeking to have their losses reimbursed through claims for the Federal share of compensation—where a sensible resolution of the matter would be for the United States to forbear from exercising those rights as part of a prudent global settlement agreement that resolves the matter in question as to all parties. The proposed change provides the flexibility to consider such an approach in an appropriate case.

The balance of the proposed changes to Subpart K make certain clarifying changes or delete material that is now redundant or unnecessary, and do not seek to establish any substantive changes.

Subpart L—Cap on Annual Liability

The proposed changes in Subpart L incorporate language required by the 2015 Reauthorization Act, or conform the provisions to Treasury's other data collection authorities under Part 50.

III. Participation of Captive Insurers and Other Self-Insurance Arrangements in the Program: Request for Comments

Under Section 103(f) of TRIA, the Secretary ''may apply the provisions of this title, as appropriate, to other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities. . . .'' Treasury has previously advised that state-licensed captive insurers participate in the Program by virtue of their status as licensed insurance entities, and has issued some guidance concerning that participation; however, Treasury has not issued any rules specifically concerning the participation of captive insurers in the Program. Treasury also has not issued any rules concerning the participation of ''other self-insurance arrangements by municipalities and other entities'' in the Program.

In anticipation of the development of rules concerning the participation of captive insurers and, potentially, other self-insurance arrangements in the Program, Treasury invites interested parties to provide comments concerning these issues. While interested parties are invited to address these matters generally, Treasury particularly invites responses to the following questions:

(1) What is the current role of captive insurers (both state-licensed entities and otherwise) in providing insurance in TRIP-eligible lines?

(2) Should captive arrangements that insure U.S.-based risks, other than those involving state-licensed insurers, participate in the Program? Upon what basis should such participation take place?

(3) Should separate rules address the criteria for which captives, of any type, qualify for reimbursement under the Program? In response to this question, please address whether and/or how the relatively small TRIP-eligible premiums of such insurers should affect their insurer deductible.

(4) Given the relatively small size of some captive insurers, should some assessment be made of their capital and claims paying ability in connection with their participation in the Program? If so, how should Treasury consider and address such issues?

(5) To what extent are captives being relied upon to insure so-called ''trophy risks'' that might be deemed to be subject to a heightened risk of terrorism?

(6) What is the current role of self-insurance arrangements in providing workers' compensation reimbursement for losses that could be subject to the Program?

(7) What is the current extent of self-insurance arrangements in other TRIA-eligible lines apart from workers' compensation insurance?

(8) Should self-insurance arrangements, apart from state-licensed captives, qualify for participation in the Program? Do self-insurers wish to participate in the Program? If self-insurers were to participate in the Program, how would such participation be structured, including in terms of

deductibles and potential liability for the recoupment of surcharges?

IV. Procedural Requirements

Executive Order 12866, ''Regulatory Planning and Review.'' This rule is a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* Treasury must consider whether this rule, if promulgated, will have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). In this case, Treasury certifies that this Proposed Rule, if adopted, would likely not have a significant economic impact on a substantial number of small entities. Although the rule may affect a substantial number of small insurers, the economic impact is unlikely to be significant, for the reasons explained below.

Treasury has previously determined that regulations issued in connection with the Program do not have a significant economic impact on a substantial number of small entities. As noted previously, TRIA requires all insurers, regardless of size or sophistication, which receive direct earned premiums for commercial property and casualty insurance, to participate in the Program. The Act also defines property and casualty insurance to mean commercial lines of insurance, with certain specific exclusions, without any reference to the size or scope of the insurer. Thus, the economic impacts associated with the Program regulations flow from TRIA, and not from the prior regulations. Furthermore, the regulations that have been proposed and adopted in the past have sought to be consistent with the manner in which insurers already conduct their business, in an effort to minimize the impact of the Program's operation upon participants. All of these considerations apply with equal force in connection with the Proposed Rule.

This Proposed Rule may affect a substantial number of small entities. Existing Small Business Administration size regulations (see 13 CFR 121.201) define small entities within the direct property and casualty insurance sector as those with 1500 employees or less; however, this Proposed Rule (see proposed 31 CFR 50.4(z)) contains a definition of ''small insurer'' for purposes of the Program that is based upon the size of the insurer's policyholder surplus and direct earned premiums. Based upon either measurement, some ''small entities'' or ''small insurers'' will be subject to the Proposed Rule—just as such insurers are subject to the requirements of TRIA as enacted. For purposes of its Paperwork Reduction Analysis, below, Treasury has estimated that perhaps about 500 insurers will have lesser reporting burdens because they are ''small insurers'' that, although they write some amount of TRIP-eligible lines premium, will likely have less information to report because of the reduced scope of their operations (either geographically or in terms of lines of business, or both), or may otherwise be excused from more detailed requirements under the Proposed Rule.

Treasury has sought to tailor the Proposed Rule, including the aspects of the rule respecting data collection, to the manner in which insurance companies (including small insurers) typically operate, such that the Proposed Rule should not have a significant economic impact. This Proposed Rule would implement the reforms in the 2015 Reauthorization Act. The aspects of the rule respecting data collection address data that the Secretary has been charged under the 2015 Reauthorization Act to collect, including data that must be collected and analyzed to determine whether small insurers face competitive challenges in the terrorism risk insurance marketplace.

As discussed in the preamble, the Proposed Rule imposes certain requirements respecting the production of data that could affect the manner in which insurers, including small insurers, presently collect and maintain information. The rule has been proposed in a way that most insurers, including small insurers, should already be collecting and maintaining the data in question as part of their ordinary course of business, such that any additional costs will be occasioned by some reprogramming costs to permit the more efficient reporting of the requested data. Given the character of the information that is sought, Treasury believes that any such costs should be nominal, in light of existing obligations all insurers have to record and retain the information sought by Treasury. Nonetheless, and recognizing that the provisions of the Proposed Rule respecting data collection may impose some additional costs and burdens on small insurers, the Proposed Rule provides Treasury with the authority to excuse or modify the data collection requirements as applicable to small insurers. Treasury seeks information and comments on any costs, compliance requirements, or changes in operating procedures arising from application of the Proposed Rule on small entities or insurers, the size and characteristics of any small entity or insurer that you believe may be subject to that impact, and any ways in which you believe—consistent with the requirements of the 2015 Reauthorization Act—these aspects of the Proposed Rule could be modified to avoid or mitigate the impact that you identify.

Treasury seeks information and comments on the extent to which the Proposed Rule will affect small entities or insurers, the size and characteristics of any small entity or insurer that you believe may be subject to that impact, and any ways in which you believe—consistent with the requirements of the 2015 Reauthorization Act—these aspects of the Proposed Rule could be modified to avoid or mitigate the impact that you identify.

After reviewing the comments received during the public comment period, Treasury will consider whether to conduct additional regulatory flexibility analysis.[18]

Paperwork Reduction Act. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the

[18] Treasury notes that the proposed final netting rule was previously analyzed for purposes of the Regulatory Flexibility Act. 75 FR 45563, 45566 (August 3, 2010). As explained previously, the economic impact, if any, of the final netting rule would be most likely to fall upon large insurers which would be more likely to be subject to the termination of the claims process and the proposed commutation procedure. That economic impact on insurers would be if they were to receive less than a full Federal share of compensation that would be due in the absence of a Final Netting process. The Final Netting Date, as proposed, will be established long enough after the certified act of terrorism so that further significant loss development for reported losses is unlikely. The rule proposes to provide for commutation of remaining losses, and includes a provision that allows for a reopening of an insurer's claim for the Federal share of compensation if significant new claims are reported to the insurer subsequent to the Final Netting. The economic impact on all commercial property and casualty insurers (including any that might be small entities) should thus be minimal. Treasury invites any interested parties to comment, if they wish, as respects this prior analysis.

collection of information should be received by May 31, 2016.

Treasury specifically invites comments on:

(a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility;

(b) the accuracy of the estimate of the burden of the collections of information, including the validity of the assumptions and the methods used (*see below*);

(c) ways to enhance the quality, utility, and clarity of the information collection;

(d) ways to minimize the burden of the information collection, including the use of automated collection techniques or other forms of information technology; and

(e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

Comments are being sought with respect to new collection of information in connection with (1) annual data requests; (2) claims data; (3) certification; and (4) final netting. As respects civil penalties, there is no data collection that would be generally applicable to responding parties in general, given the individual nature of the inquiry as respects an insurer that might be in violation of some aspect of the Program.

Annual Data Requests

Beginning in 2017, with respect to 2016 data, insurers would be required to submit annual data regarding their participation in the Program, pursuant to Section 111 of the 2015 Reauthorization Act and proposed 31 CFR 50.51. The proposed rule requires an annual data collection process which will continue from year to year as long as the Program remains in effect. The information sought by Treasury will comprise data elements that insurers currently collect or generate, although not necessarily grouped together the way in which insurers currently collect and evaluate the data. Annual data collections could involve as many as about 2,000 Program participants, although the data to be collected from at least some of the insurers could be more limited. For insurers reporting standard information, Treasury anticipates approximately 50 hours to collect, process and report the data, and approximately 25 hours for collection, processing and reporting data where more limited information is sought or available. The precise breakdown between these categories will likely vary depending upon the year in question and issues presented. For illustrative purposes, Treasury assumes that approximately 1,500 insurers may be subject to the standard information request, with perhaps 500 subject to a more limited request. Assuming this breakdown, the estimated annual burden would be 87,500 hours (1,500 insurers × 50 hours + 500 insurers × 25 hours).

Description of recordkeepers: Insurers as defined in 31 CFR 50.4.

Estimated number of recordkeepers: 2,000 insurers, potentially divided for illustrative purposes into 1,500 insurers with standard reporting obligations and 500 insurers with more limited reporting responsibilities.

Estimated frequency: Annually.

Average estimated recordkeeping burden: 50 hours per year per insurer, reducing to 25 hours per year per insurers with more limited reporting responsibility.

Total estimated recordkeeping burden: 87,500 hours per year.

This data collection burden is imposed by the 2015 Reauthorization Act which requires the Secretary to require insurers participating in the Program to submit information regarding insurance coverage for terrorism losses.

Claims Data

The data collection rules also propose reporting of claims data by insurers as losses are sustained by insurers in the ordinary course once there has been a certified act of terrorism. The claims data sought is in a form that will be generated by insurers in the ordinary course of their operations. Accordingly, the burden associated with the requirement should consist of generating monthly reports of losses from existing data as generated and maintained by insurers. The number of insurers with insured losses in connection with any act of terrorism will vary depending upon the size and nature of the certified act of terrorism, as will the time period during which claims information will need to be reported to Treasury. Accordingly, Treasury can only make a ''best estimate'' as to the burden presented, which is based upon the estimate that 100 insurers will have insured losses, and will need to report information on a monthly basis over, on average, a four-year period. It is anticipated that the reporting will require no more than 2 hours per month per insurer to generate the required report from existing data and submit it to Treasury. This results in an estimated burden for each certified act of terrorism of 9,600 hours (100 insurers × 2 hours × 48 months).

Description of recordkeepers: Insurers who have sustained insured losses, as defined in 31 CFR 50.4.

Estimated number of recordkeepers: 100.

Estimated Frequency: Monthly.

Average estimated recordkeeping burden: 2 hours.

Total estimated recordkeeping burden: 9,600 hours over a four-year period estimated to be necessary on average to report all insured losses.

Certification

The proposed rules associated with the certification process contemplate that if the Secretary is considering an act for certification as an act of terrorism Treasury may need to collect loss information and estimates directly from insurers in order to confirm that losses are above relevant loss thresholds. It is uncertain that this process would ever require reporting from more than 10 entities, which is the threshold under the Paperwork Reduction Act. Depending upon the circumstances, however, Treasury estimates that it is possible that it could seek loss information from as many as 20 insurers in connection with any individual certification process. The information that Treasury would seek would be generated by insurers during the ordinary course of their operations, although given the time-sensitive nature of the certification process the information sought from individual insurers could impose additional burdens on account of the need to generate the information in a more expedited fashion. Treasury estimates that the burden upon each insurer from which data is sought could amount to 15 hours per insurer. This results in an estimated burden for each act under consideration for certification as an act of terrorism of 300 hours (20 insurers × 15 hours).

Description of recordkeepers: Insurers who may have sustained insured losses as defined in 31 CFR 50.4.

Estimated number of recordkeepers: Up to 20.

Estimated Frequency: Once per certification process.

Average estimated recordkeeping burden: 15 hours.

Total estimated recordkeeping burden: Up to 300 hours.

Final Netting-Commutation

Treasury previously analyzed the potential burdens associated with the proposed Final Netting Rule. See 75 FR 45563, 45566 (August 3, 2010). As explained previously, the collection of

information associated with Final Netting would be in connection with the commutation procedure proposed in § 50.76(d)(2). As in connection with the other matters addressed herein, the required information and process follows normal business procedures of insurers—here, in the fashion that they interact with their reinsurers. Information would include an insurer's justification for a final payment amount with necessary actuarial factors and methodology, and pertinent information regarding the insurer's business relationships and other reinsurance recoverables. Information must be supplied in enough detail to clearly show the expected future loss payments, how the present value amount has been determined, and reconciliation to the last Certification of Loss. Treasury will evaluate the submission in order to determine a final payment amount or (if applicable) an amount that must be repaid to Treasury. Utilizing, again, the estimate that perhaps 100 insurers might sustain insured losses in connection with any given act of terrorism, Treasury estimates that there might be 15 of those insurers who will be involved in a commutation after the determination of a Final Netting Date. Treasury estimates that an insurer would need 40 hours, on average, to assemble and analyze the relevant data (otherwise collected by the insurer in the ordinary course) and develop a submission to Treasury for commutation. The estimated total onetime burden would be 600 hours (15 insurers × 40 hours).

Description of recordkeepers: Insurers part of a commutation procedures, as defined in 31 CFR 50.76(d)(2).

Estimated number of recordkeepers: 15.

Estimated Frequency: Once per event.

Average estimated recordkeeping burden: 40 hours.

Total estimated recordkeeping burden: 600 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

List of Subjects

Insurance, Terrorism.

For the reasons stated in the preamble, the Department of the Treasury proposes to revise 31 CFR part 50 to read as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

Subpart A—General Provisions

Sec.

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322, as amended by Public Law 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839 and Public Law 114–1, 129 Stat. 3 (15 U.S.C. 6701 note).

Subpart A—General Provisions

§ 50.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839, and the Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114–1, 129 Stat. 3.

(b) *Purpose.* This part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This part applies to insurers subject to the Act and their policyholders.

§ 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office within the Federal Insurance Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

§ 50.3 Mandatory participation in program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

§ 50.4 Definitions.

For purposes of this part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002 (as amended).

(b) *Act of terrorism*—(1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in consultation with the Attorney General of the United States and the Secretary of Homeland Security:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) Property and casualty insurance losses resulting from the act, in the aggregate, do not exceed $5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2)(i) For purposes of paragraph (c)(1) of this section, an insurer has control over another insurer for purposes of the Program if:

(A) The insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(B) The insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(C) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (ii) of this section.

(ii) An entity, including any affiliate thereof, does not have control or exercise controlling influence over a reciprocal insurer under this section if, as of January 12, 2015, the entity was acting as an attorney-in-fact for the reciprocal insurer, provided that the entity does not, for reasons other than activities it may perform under the attorney-in-fact relationship, have control over the reciprocal insurer as otherwise defined under this section.

(3) An insurer described in paragraph (c)(2)(i)(A) or (B) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(i)(C) of this section, if an insurer is not described in paragraph (c)(2)(i)(A) or (B) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under the laws of a state, and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under state law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(i)(C) of this section.

(iii) If an insurer, at any time during a calendar year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of one or more incorporated or individual unincorporated underwriters, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(i)(C) of this section.

(iv) If paragraphs (c)(4)(i) through (iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(i)(C) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;

(C) The insurer is party to an agreement pursuant to which the insurer possesses a material economic stake in the other insurer resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the other insurer;

(D) The insurer is party to an agreement that enables the insurer to influence a material aspect of the management or policies of the other insurer;

(E) The insurer would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of the other insurer's voting stock in the future upon the occurrence of an event;

(F) The insurer has the power to direct the disposition of more than 25 percent of a class of voting stock of the other insurer in a manner other than a widely dispersed or public offering;

(G) The insurer and/or the insurer's representative or nominee constitute more than one member of the other insurer's board of directors; or

(H) The insurer or its nominee or an officer of the insurer serves as the chairman of the board, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the other insurer.

(5) An insurer that is not described in paragraph (c)(2)(i) or (ii) of this section may request a hearing in which the insurer may rebut a presumption of controlling influence under paragraph (c)(4)(i) through (iv) of this section or otherwise request a determination of controlling influence by presenting and supporting its position through written submissions to Treasury, and in Treasury's discretion, through informal oral presentations, in accordance with the procedure in § 50.7.

(6) An insurer's affiliates for a calendar year, for purposes of subpart H

of this part, shall be determined in accordance with the timing requirements laid out in § 50.75 of this part.

(d) *Aggregate Federal share of compensation* means the aggregate amount paid by Treasury for the Federal share of compensation for insured losses in a calendar year.

(e) *Assessment period* means a period, established by Treasury, during which policyholders of property and casualty insurance policies must pay, and insurers must collect, the Federal terrorism policy surcharge for remittance to Treasury.

(f) *Attorney-in-fact* means a person or entity appointed by the subscribers or members of a reciprocal insurer to act for and bind the reciprocal insurer under relevant state law for the benefit of its subscribers or members.

(g) *Captive insurer* means an insurer licensed under the captive insurance laws or regulations of any state.

(h) *Direct earned premium* means direct earned premium for all property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State-licensed or admitted insurers.* For a state licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for property and casualty insurance reported by the insurer on column 2 of the Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14).

(i) Premium information as reported to state regulators through the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent it reflects premiums for property and casualty insurance issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty lines of insurance (insurance primarily designed to cover personal, family or household risk exposures, with the exception of insurance written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty lines of insurance coverage that includes incidental coverage for commercial purposes are primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Property and casualty insurance against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of property and casualty insurance, but that includes incidental coverage for commercial risk exposures at such locations, is primarily not commercial, and therefore premiums for such insurance may also be fully excluded by an insurer from the calculation of direct earned premium. For purposes of this section, property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the total direct earned premium for the insurance policy is attributable to coverage at such locations. Also for purposes of this section, coverage for commercial risk exposures is incidental if it is combined with coverages that otherwise do not meet the definition of property and casualty insurance and less than 25 percent of the total direct earned premium for the insurance policy is attributable to the coverage for commercial risk exposures.

(iv) If an insurance policy covers both commercial and personal property and casualty exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any state (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (h)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its state regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (h)(1) of this section and, if necessary, re-stated to reflect the accrual method of determining direct earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium by pricing separately its premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(4) *Federally approved insurers.* A federally approved insurer, defined under section 102(6)(A)(iii) of the Act, should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (h)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.,* to the extent of Federal approval of property and casualty insurance in connection with maritime, energy or aviation activities).

(i) *Direct written premium* means the premium information for property and casualty insurance that is included by an insurer in column 1 of the Exhibit of Premiums and Losses of the NAIC Annual Statement or in an equivalent reporting requirement. The Federal terrorism policy surcharge is not included in amounts reported as direct written premium.

(j) *Discretionary recoupment amount* means such amount of the aggregate Federal share of compensation in excess of the mandatory recoupment amount that the Secretary has determined will be recouped pursuant to section 103(e)(7)(D) of the Act.

(k) *Federal Insurance Office* means the Federal Insurance Office within the U.S. Department of the Treasury.

(l) *Federal terrorism policy surcharge* means the amount established by Treasury under Subpart J of this Part that is imposed as a policy surcharge on property and casualty insurance policies, expressed as a percentage of the written premium.

(m) *Insurance marketplace aggregate retention amount* means an amount for a calendar year as calculated under section 103(e)(6) of the Act.

(1) For calendar years beginning with 2015 through 2019, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and:

(i) For calendar year 2015: $29,500,000,000;

(ii) For calendar year 2016: $31,500,000,000;

(iii) For calendar year 2017: $33,500,000,000;

(iv) For calendar year 2018: $35,500,000,000; and

(v) For calendar year 2019: $37,500,000,000.

(2) For calendar years beginning with 2020 and any calendar year thereafter as may be necessary, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and the annual average of the sum of insurer deductibles for all insurers for the prior 3 years, to be calculated by taking

(i) the total amount of direct earned premium reported by insurers to Treasury pursuant to section 50.51 for the three calendar years prior to the calendar year in question, and then dividing that figure by three; and

(ii) Multiplying the resulting three-year average figure by 20%.

(3) Beginning in 2020, Treasury shall publish in the **Federal Register** the insurance marketplace aggregate retention amount for that calendar year no later than April 30, 2020, and by every April 30 thereafter for any subsequent calendar years as necessary. To the extent the Secretary certifies an act as an act of terrorism prior to April 30 of any calendar year after 2019, Treasury will publish the relevant insurance marketplace aggregate retention amount as soon as practicable thereafter.

(n) *Insured loss.* (1) The term insured loss means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

(i) Occurs within the United States;

(ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), or to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; however, to the extent a loss occurs to such an air carrier or vessel outside the United States, the insured loss does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel; or

(iii) Occurs at the premises of any United States mission.

(2) The term insured loss includes reasonable loss adjustment expenses, incurred by an insurer in connection with insured losses, that are allocated and identified by claim file in insurer records, including expenses incurred in the investigation, adjustment, and defense of claims, but excluding staff salaries, overhead, and other insurer expenses that would have been incurred notwithstanding the insured loss.

(3) The term insured loss does not include:

(i) Punitive or exemplary damages awarded or paid in connection with the Federal cause of action specified in section 107(a)(1) of the Act. The term ''punitive or exemplary damages'' means damages that are not compensatory but are an award of money made to a claimant solely to punish or deter; or

(ii) Extra-contractual damages awarded against, or paid by, an insurer; or

(iii) Payments by an insurer in excess of policy limits.

(o) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any state (including, but not limited to, state licensed captive insurance companies, state licensed or admitted risk retention groups, and state licensed or admitted farm and county mutuals) and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

(*1*) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the state's insurance regulator, which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

(*2*) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(*3*) Be managed independently from other insurers participating in the program;

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any state, but is an eligible surplus line carrier listed on the NAIC Quarterly Listing of Alien Insurers;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such Federal approval of property and casualty insurance coverage offered by the insurer in connection with maritime, energy, or aviation activity;

(D) It is a state residual market insurance entity or state workers' compensation fund; or

(E) As determined by the Secretary, it falls within any of the classes or types of captive insurers or other self-insurance arrangements by municipalities and other entities.

(ii) If an entity falls within more than one category described in paragraph (o)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the program.

(2) The entity must receive direct earned premium, except in the case of:

(i) State residual market insurance entities and state workers' compensation funds, to the extent provided in subpart D of this part; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities to the extent provided for in subpart E of this part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(p) *Insurer deductible* means:

(1) For an insurer that has had a full year of operations during the calendar year immediately preceding the applicable calendar year, the value of an insurer's direct earned premiums during the immediately preceding calendar year, multiplied by 20 percent; and

(2) For an insurer that has not had a full year of operations during the immediately preceding calendar year, the insurer deductible will be based on data for direct earned premiums for the applicable calendar year multiplied by 20 percent. If the insurer does not have a full year of operations during the applicable calendar year, the direct earned premiums for the applicable calendar year will be annualized to determine the insurer deductible.

(q) *Mandatory recoupment amount* means the difference between the insurance marketplace aggregate retention amount for a calendar year and the uncompensated insured losses during such calendar year.

(r) *NAIC* means the National Association of Insurance Commissioners.

(s) *Person* means any individual, business or nonprofit entity (including

those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a state or other governmental unit.

(t) *Professional liability insurance* means insurance coverage for liability arising out of the performance of professional or business duties related to a specific occupation, with coverage being tailored to the needs of the specific occupation. Examples include abstracters, accountants, insurance adjusters, architects, engineers, insurance agents and brokers, lawyers, real estate agents, stockbrokers, and veterinarians. For purposes of this definition, professional liability insurance does not include directors and officers liability insurance.

(u) *Program* means the Terrorism Risk Insurance Program established by the Act.

(v) *Program Trigger Event* means a certified act of terrorism within a calendar year that results in aggregate industry insured losses, either on its own or in combination with any other certified act(s) of terrorism having previously taken place in the same calendar year, exceeding:

(1) $100,000,000 with respect to calendar year 2015 insured losses;

(2) $120,000,000 with respect to calendar year 2016 insured losses;

(3) $140,000,000 with respect to calendar year 2017 insured losses;

(4) $160,000,000 with respect to calendar year 2018 insured losses;

(5) $180,000,000 with respect to calendar year 2019 insured losses; or

(6) $200,000,000 with respect to calendar year 2020 insured losses and with respect to any calendar year thereafter.

(w) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance, and:

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 22—Aircraft (all perils); and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1998) (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(vii) Reinsurance or retrocessional reinsurance;

(viii) Commercial automobile insurance, including insurance reported under Lines 19.3 (Commercial Auto No-Fault (personal injury protection)), 19.4 (Other Commercial Auto Liability) and 21.2 (Commercial Auto Physical Damage) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ix) Burglary and theft insurance, including insurance reported under Line 26 (Burglary and Theft) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(x) Surety insurance, including insurance reported under Line 24 (Surety) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(xi) Professional liability insurance as defined in paragraph (t) of this section; or

(xii) Farm owners multiple peril insurance, including insurance reported under Line 3 (Farmowners Multiple Peril) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

(x) *Reciprocal insurer* means an insurer organized under relevant state law as a reciprocal or interinsurance exchange.

(y) *Secretary* means the Secretary of the U.S. Department of the Treasury.

(z) *Small insurer* means an insurer (or an affiliated group of insurers in the case of affiliates within the meaning of paragraph (c) of this section) whose policyholder surplus for the immediately preceding year is less than five times the Program Trigger amount for the current year and whose direct earned premium for the preceding year is also less than five times the Program Trigger amount for the current year. An insurer that has not had a full year of operations during the immediately preceding calendar year is a small insurer if its policyholder surplus in the current year is less than five times the Program Trigger amount for the current year. A captive insurer is not a small insurer, regardless of the size of its policyholder surplus or direct earned premium.

(aa) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(bb) *Surcharge* means the Federal terrorism policy surcharge as defined in paragraph (l) of this section.

(cc) *Surcharge effective date* means the date established by Treasury that begins the assessment period.

(dd) *Treasury* means the U.S. Department of the Treasury.

(ee) *Uncompensated insured losses* means the aggregate amount of insured losses of all insurers in a calendar year, once there has been a Program Trigger Event, that is not compensated by the Federal Government because such losses:

(1) Are within the insurer deductibles of insurers, or

(2) Are within the portions of losses in excess of insurer deductibles that are not compensated through payments made as a result of claims for the Federal share of compensation.

(ff) *United States* means the several states, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

§ 50.5 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

§ 50.6 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from Treasury at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx:*

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002);

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003);

(4) Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006);

(5) Interim Guidance V issued by Treasury on December 31, 2007, and published at 73 FR 5264 (Jan. 29, 2008).

(6) Interim Guidance VI issued by Treasury on February 4, 2015, and published at 80 FR 6656 (February 6, 2015).

§ 50.7 Procedure for requesting determinations of controlling influence.

(a) An insurer or insurers not having control over another insurer under § 50.4(c)(2)(i) or (ii) may make a written submission to Treasury to rebut a presumption of controlling influence under § 50.4(c)(4)(i) through (iv) or otherwise to request a determination of controlling influence. Such submissions shall be made to the Terrorism Risk Insurance Program Office, Department of the Treasury, Room 1410, 1500 Pennsylvania Ave. NW., Washington, DC 20220. The submission should be entitled, ''Controlling Influence Submission,'' and should provide the full name and address of the submitting insurer(s) and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(b) Treasury will review submissions and determine whether Treasury needs additional written or orally presented information. In its discretion, Treasury may schedule a date, time, and place for an oral presentation by the insurer(s).

(c) An insurer or insurers must provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers and the control factors in § 50.4(c)(4)(i) through (iv); and must explain in detail any basis for why the insurer believes that no controlling influence exists (if a presumption is being rebutted) in light of the particular facts and circumstances, as well as the Act's language, structure and purpose. Any confidential business or trade secret information submitted to Treasury should be clearly marked. Treasury will handle any subsequent request for information designated by an insurer as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

(d) Treasury will review and consider the insurer submission and other relevant facts and circumstances. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any additional information requested by Treasury, and including any oral presentation, Treasury will issue a final determination of whether one insurer has a controlling influence over another insurer for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

(Approved by the Office of Management & Budget under control number 1505–0190.)

§ 50.8 Procedure for requesting general interpretations of statute.

Persons actually or potentially affected by the Act or regulations in this Part may request an interpretation of the Act or regulations by writing to the Terrorism Risk Insurance Program Office, Room 1410, Department of the Treasury, 1500 Pennsylvania Ave. NW., Washington, DC 20220, giving a detailed explanation of the facts and circumstances and the reason why an interpretation is needed. A requester should segregate and mark any confidential business or trade secret information clearly. Treasury in its discretion will provide written responses to requests for interpretation. Treasury reserves the right to decline to provide a response in any case. Except in the case of any confidential business or trade secret information, Treasury will make written requests for interpretations and responses publicly available at the Treasury Department Library, on the Treasury Web site, or through other means as soon as practicable after the response has been provided. Treasury will handle any subsequent request for information that had been designated by a requester as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR part 1.

Subpart B—Disclosures as Conditions for Federal Payment

§ 50.10 General disclosure requirements.

(a) *Content of disclosure.* As a condition for Federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and

(2) The Federal share of compensation for insured losses under the Program.

(b) *Form and timing of disclosure.* The disclosure required by the Act must be made on a separate line item in the policy, at the time of offer and of renewal of the policy.

§ 50.11 Definition.

For purposes of this Subpart, unless the context indicates otherwise, the term ''disclosure'' or ''disclosures'' refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term ''cap disclosure'' refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

§ 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.16 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice and provided that the amount of annual premium or the method of determining the annual premium is also stated. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a ''surcharge.''

(c) *Method of disclosure.* Subject to § 50.10(b), an insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as

described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for Federal payment under the Program.

§ 50.13 Offer and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer and of renewal of the policy'' under § 50.10(b) if the insurer makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder.

§ 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a ''separate line item in the policy'' under § 50.10(b) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

§ 50.15 Cap disclosure.

(a) *General.* Under section 103(e)(2) of the Act, if the aggregate insured losses exceed $100,000,000,000 during any calendar year, the Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000.

(b) *Other requirements.* As a condition for Federal payments under section 103(b) of the Act, an insurer must provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The cap disclosure must be made at the time of offer, purchase, and renewal of the policy.

(c) *Offer, purchase, and renewal.* An insurer is deemed to be in compliance with the requirement of providing disclosure ''at the time of offer, purchase, and renewal of the policy'' under § 50.15(b) if the insurer:

(1) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(2) If terrorism risk coverage is purchased, the insurer makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

(d) *Other applicable rules.* The cap disclosure is covered by the rules in § 50.12(a), (c), (d), (e), and (f) (relating to clear and conspicuous disclosure).

§ 50.16 Use of model forms.

(a) *General.* An insurer that is required to make the disclosure under § 50.10(b) or § 50.15(b) is deemed to be in compliance with the disclosure requirements if the insurer uses NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as appropriate.

(b) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirements. An insurer may use other means to comply with the disclosure requirements, as long as the disclosures comport with the requirements of the Act.

(c) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as revised in January 2015, or as subsequently modified by the NAIC, provided Treasury has stated that usage by insurers of the subsequently modified forms is deemed to satisfy the disclosure requirements of the Act and the insurer uses the most current forms, so approved by Treasury, that are available at the time of disclosure. These forms may be found on the Treasury Web site at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.*

§ 50.17 General disclosure requirements for State residual market insurance entities and State workers' compensation funds.

(a) *Residual market mechanism disclosure.* A state residual market insurance entity or state workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business practices, including forms and methods of communication used to communicate similar information to policyholders. The disclosures may be made by the state residual market insurance entity or state workers' compensation fund itself, the individual insurers that participate in the state residual market insurance entity or state workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(b) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to state residual insurance market entities and state workers' compensation funds.

Subpart C—Mandatory Availability

§ 50.20 General mandatory availability requirements.

(a) *General requirements.* Under section 103(c) of the Act, an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Compliance through 2020.* Under section 108(a) of the Act, an insurer must comply with paragraphs (a)(1) and (2) of this section through calendar year 2020.

(c) *Beyond 2020.* Notwithstanding paragraph (a)(2) of this section and § 50.22(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2020, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

§ 50.21 Make available.

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Offer consistent with definition of act of terrorism.* An insurer must make available coverage for insured losses in a policy of property and casualty insurance consistent with the definition of an act of terrorism as defined in § 50.4(b).

(c) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to make available coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder or prospective policyholder declines, the insurer may negotiate with the policyholder or

prospective policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable state law. An insurer is not required by the Act to offer partial coverage if the policyholder or prospective policyholder declines full coverage. See § 50.23.

(d) *Demonstrations of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

§ 50.22 No Material difference from other coverage.

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses arising from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses arising from events other than acts of terrorism. For purposes of this requirement, ''terms'' excludes price.

(b) *Limitations on types of risk.* An insurer is not required to cover risks that it typically excludes or does not write to satisfy the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct state regulatory oversight, or because a state permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

§ 50.23 Applicability of State law requirements.

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable state law requirements.

(b) *Examples.* (1) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to state regulation first makes available coverage in accordance with § 50.20 and the state permits certain exclusions or allows for other limitations, or an insurance policy is not governed by state law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

Subpart D—State Residual Market Insurance Entities; State Workers' Compensation Funds

§ 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.4(o), all state residual market insurance entities and state workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory participation.* State residual market insurance entities and State workers' compensation funds are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury maintains a list of state residual market insurance entities and state workers' compensation funds at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx.* Procedures for providing comments and updates to that list are posted with the list.

§ 50.31 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A state residual market insurance entity or a state workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A state residual market insurance entity or a state workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.4(h)(1) or (2) for the purposes of calculating the appropriate measure of direct earned premium.

§ 50.32 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares profits and losses with a private sector insurer is deemed not to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A state residual market insurance entity or a State workers' compensation fund that is deemed not to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

§ 50.33 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing carriers.* For purposes of this subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a state residual market insurance entity or a state workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a state residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.4(h)(1) or (2)) of the servicing carrier.

(b) *Participant insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a state residual market insurance entity or a state workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a state residual market insurance entity or state workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers), shall be included in direct earned premium (as described in § 50.4(h)(1) or (2)) of the participant insurer.

Subpart E—Self-Insurance Arrangements; Captives [Reserved].

Subpart F—Data Collection

§ 50.50 General.

Treasury may request from insurers such data and information as may be reasonably required in support of Treasury's administration of the Program.

§ 50.51 Annual data reporting.

(a) *General.* No later than March 1 of each calendar year, all insurers shall provide specified data and information respecting their Program participation.

(b) *Scope.* The information to be provided shall address: The lines of property and casualty insurance subject to the Program, the premiums earned for terrorism risk insurance within those

lines and for those lines generally, the geographical location of exposures covered under terrorism risk insurance, the pricing of terrorism risk insurance, the take-up rate for terrorism risk insurance, the amount of private reinsurance obtained by participating insurers in connection with such policies, and other matters concerning the Program as may be identified by Treasury.

(c) *Method of reporting.* (1) Treasury will promulgate forms defining the specific data and information that each insurer must submit and make these forms available on its Web site. Each insurer shall submit the required data and information by electronic submission through the forms and data portal(s) identified on Treasury's Web site. All data and information provided as part of such electronic submission shall be certified by the insurer as a full and true statement of the information provided to the best of its knowledge, information and belief.

(2) The data and information required to be provided under this subsection may be modified annually by Treasury. Any modification shall be made during the prior calendar year, and Treasury shall provide insurers at least 90 days before requiring collection of any newly specified data or information.

(d) *Supplemental requests.* Treasury may issue supplemental requests, to some or all participating insurers, in connection with the annual data request provided for under this section, to the extent Treasury determines that it requires additional or clarifying information in order to analyze the effectiveness of the Program. Insurers shall respond to any such supplemental requests as may be made within the timeframe and in the manner specified by Treasury.

(e) *Small insurer exception.* The Secretary may exempt a small insurer that meets the definition in § 50.4(z) from any or all data calls under this section, or may modify the requests as applicable to such small insurer.

§ 50.52 Small insurer data.

(a) *General.* The Secretary may collect information relating to small insurers, as defined in § 50.4(z), in order to conduct a study of small insurers participating in the Program, and identify any competitive challenges small insurers face in the terrorism risk insurance marketplace.

(b) *Scope.* Information collected concerning small insurers may include information necessary for Treasury to identify:

(1) Changes to the market share, premium volume, and policyholder surplus of small insurers relative to large insurers;

(2) How the property and casualty insurance market for terrorism risk differs between small and large insurers, and whether such a difference exists within other perils;

(3) The impact on small insurers of the Program's mandatory availability requirement under section 103(c) of the Act;

(4) The effect on small insurers of increasing the trigger amount for the Program under section 103(e)(1)(B) of the Act;

(5) The availability and cost of private reinsurance for small insurers; and

(6) The impact that state workers compensation laws have on small insurers and workers compensation carriers in the terrorism risk insurance marketplace.

§ 50.53 Collection of claims data.

(a) *General.* Subsequent to any certification by the Secretary of an act of terrorism, insurers shall report to Treasury information respecting insured losses arising from the act of terrorism.

(b) *Contents of periodic reporting.* Reporting under this subsection shall be by a form prescribed by Treasury and made available on the Treasury Web site, which provides basic information about each claim established by an insurer that involves or potentially involves an insured loss. Information to be reported for any claims by or against a policyholder shall identify paid and reserved amounts associated with the claim. In the case of an affiliated group of insurers, the form required by this subsection shall be submitted by a single insurer designated within the affiliated group, which shall report on a consolidated basis. Data and information reported under this subsection will include:

(1) A listing of each claim by name of insured, catastrophe code, line of business, and in the case of an affiliated group of insurers, the particular insurer or insurers within the group associated with each claim;

(2) Amounts paid, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report; and

(3) Amounts reserved, both loss and loss adjustment expenses, in connection with the claim as of the effective date of the report.

(c) *Timing of reporting.* To the extent that an insurer has established one or more claims that it believes involve insured losses arising from an act of terrorism, the insurer shall submit its first report within 60 days of establishing the first of such claims. An updated report shall be submitted each month thereafter, reporting data as of the prior month, until all claims arising from the act of terrorism have been resolved.

(d) *Interrelationship with other reporting requirements.* The reporting requirements under this subsection are independent of the Initial Notice of Deductible Erosion, Initial Certification of Loss, and Supplementary Certifications of Loss requirements in subpart H.

(e) *Other sources of information.* Subsequent to any certification of an act of terrorism, Treasury may also seek information respecting loss estimates and projections from one or more organizations that are not participants in the Program, such as state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators. A data request may also be directed to insurers identified in connection with such inquiries. An insurer subject to such a data call shall respond to this request within the time frame specified in the request.

§ 50.54 Handling of data.

(a) *General.* All nonpublic information submitted to the Secretary under subparts F and G of this part shall be considered proprietary information and shall:

(1) Be handled and stored by Treasury in an appropriately secure manner;

(2) Be considered, where appropriate, to be trade secrets or commercial or financial information obtained from a person and privileged or confidential; and

(3) Not be publicly released in any unaggregated form in which a consumer, policyholder, or insurer is identifiable.

(b) *Confidentiality.* (1) The submission of any non-publicly available data and information to the Secretary under subparts F and G of this part, and the sharing of any non-publicly available data with or by the Secretary among other Federal agencies, the state insurance regulatory authorities, or any other entities shall not constitute a waiver of, or otherwise affect, any privilege or immunity arising under Federal or state law (including the rules of any Federal or state court) to which the data or information is otherwise subject.

(2) Any requirement under Federal or state law to the extent otherwise applicable, or any requirement pursuant to a written agreement in effect between the original source of any non-publicly available data or information and the source of such data or information to the

Secretary, regarding privacy or confidentiality of any data or information in the possession of the source to the Secretary, shall continue to apply to such data or information after the data or information has been provided pursuant to this Subpart.

(3) Any data or information obtained by the Secretary under subparts F or G of this part may be made available to state insurance regulatory authorities, individually or collectively through an information-sharing agreement that:

(i) Shall comply with applicable Federal law; and

(ii) Shall not constitute a waiver of, or otherwise affect, any privilege or immunity under Federal or state law (including any privilege referred to in paragraph (b)(1) of this section and the rules of any Federal or State court) to which the data or information is otherwise subject.

(4) Section 552 of title 5, United States Code, including any exceptions thereunder, shall apply to any data or information submitted under this Subpart by an insurer or affiliate of an insurer.

Subpart G—Certification

§ 50.60 Certification.

(a) *Certification decision.* The Secretary, in consultation with the United States Attorney General and the Secretary of Homeland Security, is responsible for determining whether to certify an act as an act of terrorism.

(b) *Eligibility; timing.* An act which satisfies the definition in § 50.4(b) is eligible for certification by the Secretary as an act of terrorism after consultation by the Secretary with the United States Attorney General and the Secretary of Homeland Security.

(c) *Finality.* Any decision by the Secretary to certify, or determination not to certify, an act as an act of terrorism shall be final, and shall not be subject to judicial review.

(d) *Nondelegation.* The Secretary may not delegate or designate to any other officer, employee, or person, the determination of whether to certify an act as an act of terrorism.

§ 50.61 Public communication.

(a) *Initial notification.* After the Secretary commences consideration of whether an act may satisfy the definition in § 50.4(b), and if circumstances allow, Treasury shall publish a document in the **Federal Register** notifying the public that the act is under review for certification as an act of terrorism. Treasury may also announce that an act is not under consideration for certification.

(b) *Update notification.* Not later than 30 days following the publication of a notice under paragraph (a) of this section that an act is under consideration for certification, and not later than every 60 days thereafter, Treasury shall publish a document in the **Federal Register** notifying the public whether the act is still under review for certification as an act of terrorism.

(c) *Contents of notification.* Nothing in this section shall require Treasury to provide any information other than whether the act is under review for certification as an act of terrorism (or is no longer under such review) or shall limit Treasury from providing further information of relevance.

(d) *Rules of construction.* Nothing in this section precludes the Secretary from certifying or determining not to certify an act as an act of terrorism before notifying the public that the act is under review for certification. If, in the discretion of the Secretary, circumstances relating to an act render timely notification under this section by Treasury impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

(e) *Nonbinding decision.* A notification made under this section shall not be construed to be a final determination by the Secretary of whether to certify an act as an act of terrorism.

§ 50.62 Certification data collection.

(a) *General.* (1) The Secretary, when evaluating an act for certification as an act of terrorism, may at any time direct one or more insurers to submit information regarding projected and actual losses in connection with an act and any other information the Secretary determines appropriate. The information sought by the Secretary shall be specified in the data request, and any insurer subject to the data request shall respond to the request within the time frame specified by the Secretary at the time of the request. The data requested may include actual loss reserves established by insurers in connection with the act under consideration, loss estimates generated by insurers in connection with the act under consideration which have not yet been established as actual loss reserves, and information respecting an insurer's property and casualty exposures in a particular geographic area associated with the act under consideration.

(2) An insurer not required by Treasury to submit information under paragraph (a)(1) of this section may voluntarily submit information to the Secretary as specified in public notifications issued by Treasury.

(b) *Other sources of information.* The Secretary may request information with respect to loss estimates and likely affected insurers from organizations, including state insurance regulators, insurance modeling organizations, rating agencies, insurance brokers and producers, and insurance data aggregators.

§ 50.63 Notification of certification determination.

(a) *Public notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall publish a statement and submit a document to the **Federal Register** notifying the public of the Secretary's decision.

(b) *Insurance supervisor notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing any relevant supervisory officials of the Secretary's decision.

(c) *Congressional notification.* Not later than 5 business days after the Secretary determines whether to certify an act as an act of terrorism, Treasury shall notify in writing the President of the U.S. Senate and the Speaker of the U.S. House of Representatives of the Secretary's decision.

(d) *Rule of construction.* If, in the discretion of the Secretary, circumstances relating to an act render timely notification by Treasury under this section impracticable, Treasury shall provide the notification as soon as practicable, in a manner the Secretary determines is appropriate.

Subpart H—Claims Procedures

§ 50.70 Federal share of compensation.

(a) *General.* (1) Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.73 is deemed sufficient. The Federal share of compensation under the Program shall be:

(i) 85 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2015;

(ii) 84 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2016;

(iii) 83 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2017;

(iv) 82 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2018;

(v) 81 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2019; and

(vi) 80 percent of that portion of the insurer's aggregate insured losses that exceeds its insurer deductible during calendar year 2020 and any calendar year thereafter.

(2) The percentages in paragraph (a)(1) of this section are subject to any adjustments described in § 50.71 and to the cap of $100 billion as provided in section 103(e)(2) of the Act.

(b) *Program Trigger amounts.* Notwithstanding paragraph (a) of this section or anything in this subpart to the contrary, Federal compensation will not be paid by Treasury unless the aggregate industry insured losses resulting from one or more certified acts of terrorism exceed the following amounts:

(1) For insured losses resulting from acts of terrorism taking place in calendar year 2015: $100 million;

(2) For insured losses resulting from acts of terrorism taking place in calendar year 2016: $120 million;

(3) For insured losses resulting from acts of terrorism taking place in calendar year 2017: $140 million;

(4) For insured losses resulting from acts of terrorism taking place in calendar year 2018: $160 million;

(5) For insured losses resulting from acts of terrorism taking place in calendar year 2019: $180 million;

(6) For insured losses resulting from acts of terrorism taking place in calendar year 2020 and any calendar year thereafter: $200 million.

(c) *Conditions for payment of Federal share.* Subject to paragraph (d) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation for an insured loss to an insurer upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.4(o);

(2) The insurer's insured losses, as defined in § 50.4(n) and limited by paragraph (d) of this section (including the allocated dollar value of the insurer's proportionate share of insured losses from a state residual market insurance entity or a state workers' compensation fund as described in § 50.33), have exceeded its insurer deductible as defined in § 50.4(p);

(3) The insurer has paid or is prepared to pay an insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer has provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.14 and a cap disclosure as required by § 50.15;

(6) The insurer offered coverage for insured losses and the offer was accepted by the insured prior to the act which results in the insured loss;

(7) The insurer took all steps reasonably necessary to properly and carefully investigate the insured loss and otherwise processed the insured loss using practices appropriate for the business of insurance;

(8) The insured loss is within the scope of coverage issued by the insurer under the terms and conditions of one or more policies for commercial property and casualty insurance as defined in § 50.4(w); and

(9) The procedures specified in this Subpart have been followed and all conditions for payment have been met.

(d) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (c) of this section in accordance with its authority under the Act.

(e) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (c) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(f) *Aggregate industry losses.* Treasury will determine the amount of aggregate industry insured losses resulting from a certified act of terrorism. If aggregate industry insured losses in a calendar year resulting from one or more certified acts of terrorism exceed the applicable Program Trigger amounts specified in paragraph (b) of this section, Treasury will publish a document in the **Federal Register** of a Program Trigger Event.

§ 50.71 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a calendar year used to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the calendar year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any calendar year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured losses for acts of terrorism in that calendar year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses for acts of terrorism in a calendar year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other compensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* With respect to any underlying claim for insured losses, each insurer shall inquire of all involved policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the form specified in § 50.73(b)(1).

§ 50.72 Notice of deductible erosion.

Each insurer shall submit to Treasury a Notice on a form prescribed by Treasury whenever the insurer's aggregate insured losses (including reserves for ''incurred but not reported'' losses) within a calendar year exceed an amount equal to 50 percent of the insurer's deductible as specified in § 50.4(p). Insurers are advised that the form for the Notice of Deductible Erosion will include an initial estimate of aggregate insured losses for the calendar year, the amount of the insurer deductible, and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the Notice will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose of providing loss and compliance certifications as required in § 50.73 and for receiving, disbursing, and distributing payments of the Federal share of compensation in accordance with § 50.74. An insurer, at its option, may elect to include with its Notice of Deductible Erosion the certification of direct earned premium required by § 50.73(b)(3).

§ 50.73 Loss certifications.

(a) *General.* When an insurer has paid aggregate insured losses that exceed its insurer deductible for a calendar year, the insurer may make claim upon Treasury for the payment of the Federal share of compensation for its insured losses. The insurer shall file an Initial Certification of Loss, on a form prescribed by Treasury, and thereafter such Supplementary Certifications of Loss, on a form prescribed by Treasury, as may be necessary to receive payment for the Federal share of compensation for its insured losses.

(b) *Initial certification of loss.* An insurer shall use its best efforts to file with the Program the Initial Certification of Loss within 45 days following the last calendar day of the month when an insurer has paid aggregate insured losses that exceed its insurer deductible. The Initial Certification of Loss will include the following:

(1) Basic information, on a form prescribed by Treasury, about each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer. The form will include:

(i) A listing of each insured loss paid (or to be paid pursuant to § 50.73(b)(2)(i)) by the insurer by catastrophe code and line of business;

(ii) The total amount of reinsurance recovered from other sources;

(iii) A calculation of the aggregate insured losses sustained by the insurer above its insurer deductible for the calendar year; and

(iv) The amount the insurer claims as the Federal share of compensation for its aggregate insured losses.

(2) A certification that the insurer is in compliance with the provisions of section 103(b) of the Act and this part, including certifications that:

(i) The underlying insured losses reported pursuant to § 50.73(b)(1) either: Have been paid by the insurer; or will be paid by the insurer upon receipt of an advance payment of the Federal share of compensation as soon as possible, consistent with the insurer's normal business practices, but not longer than five business days after receipt of the Federal share of compensation;

(ii) The underlying claims for insured losses were filed by persons who suffered an insured loss, or by persons acting on behalf of such persons;

(iii) The underlying claims for insured losses were processed in accordance with appropriate business practices and the procedures specified in this subpart;

(iv) The insurer has complied with the disclosure requirements of §§ 50.10 through 50.14, and the cap disclosure requirement of § 50.15, for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

(v) The insurer has complied with the mandatory availability requirements of subpart C of this part.

(3) A certification of the amount of the insurer's direct earned premium, together with the calculation of its insurer deductible (provided this certification was not submitted previously with the Notice of Deductible Erosion).

(4) A certification that the insurer will disburse payment of the Federal share of compensation in accordance with this Subpart.

(5) A certification that if Treasury has determined a *Pro Rata* Loss Percentage (PRLP) (see § 50.112), the insurer has complied with applying the PRLP to insured loss payments, where required.

(c) *Supplementary certifications of loss.* If the total amount of the Federal share of compensation due an insurer for insured losses under the Act has not been determined at the time an Initial Certification of Loss has been filed, the insurer shall file monthly, or on a schedule otherwise determined by Treasury, Supplementary Certifications of Loss updating the amount of the Federal share of compensation due for the insurer's insured losses. Supplementary Certifications of Loss will include the following:

(1) A form as described in § 50.73(b)(1); and

(2) A certification as described in § 50.73(b)(2).

(d) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, Treasury may require such additional supporting documentation as required to ascertain the Federal share of compensation for the insured losses of any insurer.

(e) *State Residual Market Insurance Entities and State Workers' Compensation Funds.* A state residual market insurance entity or a state workers' compensation fund described in § 50.32 shall provide the Certifications of Loss described in § 50.73(b) and (c) for all of its insured losses to each participating insurer at the time it provides the allocated dollar value of the participating insurer's proportionate share of insured losses. In addition, at such time the state residual market insurance entity or state workers' compensation fund shall provide the certification described in § 50.73(b)(2) to Treasury. Participating insurers shall treat the allocated dollar value of their proportionate share of insured losses from a state residual market insurance entity or state workers' compensation fund as an insured loss for the purpose of their own reporting to Treasury in seeking the Federal share of compensation.

§ 50.74 Payment of Federal share of compensation.

(a) *Timing.* Treasury will promptly pay to an insurer the Federal share of compensation due the insurer for its insured losses. Payment shall be made in such installments and on such conditions as determined by the Treasury to be appropriate. Any overpayments by Treasury of the Federal share of compensation will be offset from future payments to the insurer or returned to Treasury within 45 days.

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Notice of Deductible Erosion required by § 50.72. An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the

insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx* or otherwise will be made publicly available.

(c) *Account for reimbursement.* An insurer shall designate an account for the receipt of reimbursement of the Federal share of compensation at an institution eligible to receive payments through the Automated Clearing House (ACH) network.

(d) *Segregated account for advance payments.* An insurer that seeks advance payments of the Federal share of compensation as certified according to § 50.73(b)(2)(i) shall establish a segregated account into which Treasury will make advance payments as well as reimbursements to the insurer.

(1) *Definition of segregated account.* For purposes of this section, a segregated account is an interest-bearing separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

(i) Receiving payments of the Federal share of compensation;

(ii) Disbursing payments to insureds and claimants; and

(iii) Transferring payments to the insurer or affiliated insurers for insured losses reported as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Bureau of the Fiscal Service or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this Subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Notice of Deductible Erosion to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered is discharged to the extent of the payment.

§ 50.75 Determination of affiliations.

For the purposes of this subpart, an insurer's affiliates for any calendar year shall be determined by the circumstances existing on the date of the act which is the Program Trigger Event for that calendar year.

§ 50.76 Final netting.

(a) *General.* Pursuant to section 103(e)(4) of the Act, the Secretary shall have sole discretion to determine the time at which claims relating to any insured loss or act of terrorism shall become final.

(b) *Final Netting Date.* The Secretary may determine a Final Netting Date for a calendar year, which for purposes of this Part is the date on or before which an insurer must report to Treasury on the insurer's Certifications of Loss (both Initial Certification of Loss and any Supplemental Certifications of Loss) all insured losses that have been reported by its policyholders for the calendar year.

(1) *Criteria for Final Netting Date.* The establishment of a Final Netting Date will be based on factors and considerations including:

(i) Amounts of case reserves reported by insurers to Treasury for open underlying insured losses;

(ii) The rate at which claims for the Federal share of compensation for insured losses are being made by insurers to Treasury;

(iii) The rate at which new underlying insured losses are being added by insurers to their Supplementary Certifications of Loss and reported;

(iv) The predominant lines of business for which underlying insured losses are being reported;

(v) Tort and contract statutes of limitations relevant to insured losses and the manner in which they are being applied by the Federal courts;

(vi) Common business practices;

(vii) Issues that are delaying final resolution of insured losses;

(viii) The application of the liability limitations and procedures under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (6 U.S.C. 441 *et seq.*) that may affect final resolution of insured losses;

(ix) Issues related to the cap on annual liability for insurer losses, including whether a projection that the cap on annual liability will be reached in connection with any calendar year indicates that no Final Netting Date should be set for that calendar year;

(x) Treasury's claims administration costs; and

(xii) Such other factors as the Secretary considers appropriate to take into account.

(2) *Notice of Final Netting Date.* Treasury shall announce and publish in the **Federal Register** notice of a proposed Final Netting Date and its application to a specific calendar year, and will solicit comments from the public regarding the appropriateness of the proposed Final Netting Date. After receipt and evaluation of comments respecting its proposed Final Netting Date, Treasury will publish in the **Federal Register** a Final Netting Date, which is at least 180 days after the date of publication. The Secretary's determination of a Final Netting Date is final and not subject to judicial review.

(c) *Post-Final Netting Date claims.* After the Final Netting Date, insurers may only make further claims for the Federal share of compensation for insured losses by submission of Supplemental Certifications of Loss with updated information on underlying insured losses previously reported to Treasury. Such updated information may reflect a decision by a court of competent jurisdiction concerning a limitation of liability under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002. In the case of workers' compensation losses, the insurer may provide updated information based on the number of workers' compensation claimants previously reported. An insurer may not report any new underlying insured losses, or increased workers' compensation loss amounts based on an increase in the number of workers' compensation claimants, to Treasury after a Final Netting Date, except as provided in this section.

(d) *Commutation.* A commutation is the payment by Treasury of a lump sum present value of future payments to an insurer in lieu of making payments in the future, as provided in this section.

(1) In lieu of continued submission of Supplemental Certifications of Loss after the Final Netting Date as provided in paragraph (c) of this section, Treasury may require, or consider an insurer's request for, a commutation of an insurer's future claims for the Federal share of compensation based on estimates for the underlying insured losses reported to Treasury on or before the Final Netting Date. The payment by Treasury of a final commuted amount to an insurer will discharge Treasury from

all future liabilities to the insurer for the Federal share of compensation for insured losses for the applicable calendar year. In the case of an affiliated group of insurers, the requirements of § 50.74(f) apply, and payment of the final commuted amount to the designated insurer of the affiliated group discharges Treasury's payment obligation to the insurers in the affiliated group for insured losses for the applicable calendar year.

(2) If future claims are to be commuted, Treasury may require additional information from the insurer, including an insurer's justification for a final payment amount with necessary actuarial factors and methodology, and pertinent information regarding the insurer's business relationships and other reinsurance recoverables. Insurers will be required to justify discount and other factors from which final payment amounts are derived. If Treasury notifies an insurer of a requirement to submit additional information to inform its commutation decision, the insurer will be provided (depending upon the complexity of the material sought) no less than 90 days from the date of notification to submit material required in the notice. If the insurer fails to provide the requested information, it will forfeit the right to future payments from Treasury. Treasury will evaluate such information in order to determine a final payment amount or (if applicable) an amount to be repaid to Treasury. Treasury may determine that it will not consider commutation until it has completed an audit of an insurer's insured losses pursuant to the authority set forth in Subpart I of these regulations.

(3) Payments of commuted amounts are not considered to be advance payments requiring a segregated account as described in § 50.74(d).

(4) Notwithstanding § 50.70(d), a payment by Treasury of a final commuted amount to an insurer is final unless:

(i) Treasury is put on notice that an insurer's claim was fraudulent or that other conditions for Federal payment were not met, in which case the insurer will be required to repay amounts that were not due; or

(ii) The exception in paragraph (e) of this section applies, in which case Treasury may make additional payments for insured losses, but only under the conditions described in paragraph (e).

(e) *Exception.* If within one year after the Final Netting Date, and regardless of commutation, an insurer has additional underlying reported insured losses that, in the absence of a Final Netting Date, would result in an increase of the Federal share of compensation to that insurer by 20% of the total amount already paid to that insurer, the insurer may request Treasury to allow those underlying insured losses to be submitted as part of a certification of loss. Under such circumstances and provided that all other conditions for payment have been met, Treasury may reopen or extend the insurer's claim for the Federal share of compensation for insured losses for the pertinent calendar year.

Subpart I—Audit and Investigative Procedures

§ 50.80 Audit authority.

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses, or pertinent to any Federal terrorism policy surcharge that is imposed pursuant to subpart J of this part, for the purposes of investigation, confirmation, audit, and examination.

§ 50.81 Recordkeeping.

(a) Each insurer that seeks payment of a Federal share of compensation under subpart H of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and insured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than five (5) years from the termination dates of all reinsurance agreements involving property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than three (3) years following the conclusion of the policy year. Records relating to underlying claims shall be retained for not less than five (5) years following the final adjustment of the claim.

(b) Each insurer that collects a Federal terrorism policy surcharge as required by Subpart J of this part shall retain records related to such surcharge, including records of the property and casualty insurance premiums subject to the surcharge, the amount of the surcharge imposed on each policy, aggregate Federal terrorism policy surcharges collected, and aggregate Federal terrorism policy surcharges remitted to Treasury during each assessment period. Such records shall be retained and kept available for review for not less than three (3) years following the conclusion of the assessment period or settlement of accounts with Treasury, whichever is later.

§ 50.82 Civil penalties.

(a) *General.* The Secretary may assess a civil monetary penalty in an amount not exceeding the amount under paragraph (b) of this section against any insurer that the Secretary determines, on the record after opportunity for a hearing:

(1) Has failed to charge, collect, or remit the Federal terrorism policy surcharge under Subpart J;

(2) Has intentionally provided to Treasury erroneous information regarding premium or loss amounts;

(3) Submits to Treasury fraudulent claims under the Program for insured losses;

(4) Has failed to provide any disclosures or other information required by Treasury; or

(5) Has otherwise failed to comply with provisions of the Act or these regulations.

(b) *Amount.* The amount under this section is the greater of $1,325,000 and, in the case of any failure to pay, charge, collect, or remit amounts in accordance with the Act or these regulations, such amount in dispute.

(c) *Recovery of amount in dispute.* A penalty under this section for any failure to pay, charge, collect, or remit amounts in accordance with the Act or under these regulations shall be in addition to any such amounts recovered by Treasury.

(d) *Procedure.* Treasury shall notify in writing any insurer that it believes has committed one or more of the acts identified in paragraph (a) of this section. In that notification, Treasury shall identify the act or acts that it believes has been violated, and its basis for that belief, and shall set a schedule for further proceedings which shall include:

(1) The opportunity for a written submission by the insurer that provides all relevant facts and circumstances concerning the alleged conduct, including any information that the insurer wishes Treasury to consider in connection with the alleged conduct; and

(2) A hearing on the record, unless waived by the insurer, during which Treasury and the insurer may present

further information respecting the conduct in question.

(e) *Other remedies preserved.* Treasury's assessment and collection of a civil monetary penalty under this section shall be in addition and without prejudice to any other civil remedies or criminal penalties that may arise on account of the conduct in question under any other laws or regulations of the United States.

Subpart J—Recoupment and Surcharge Procedures

§ 50.90 Mandatory and discretionary recoupment.

(a) Pursuant to section 103(e) of the Act, the Secretary shall impose, and insurers shall collect, such Federal terrorism policy surcharges as needed to recover 140 percent of the mandatory recoupment amount for any calendar year.

(b) In the Secretary's discretion, the Secretary may recover any portion of the aggregate Federal share of compensation that exceeds the mandatory recoupment amount through a Federal terrorism policy surcharge based on the factors set forth in section 103(e)(7)(D) of the Act.

(c) If the Secretary imposes a Federal terrorism policy surcharge as provided in paragraph (a) of this section, then the required amounts, based on the extent to which payments for the Federal share of compensation have been made by the collection deadlines in section 103(e)(7)(E) of the Act, shall be collected in accordance with such deadlines:

(1) For any act of terrorism that occurs on or before December 31, 2017, the Secretary shall collect all required amounts by September 30, 2019;

(2) For any act of terrorism that occurs between January 1 and December 31, 2018, the Secretary shall collect 35 percent of any required amounts by September 30, 2019, and the remainder by September 30, 2024; and

(3) For any act of terrorism that occurs on or after January 1, 2019, the Secretary shall collect all required amounts by September 30, 2024.

§ 50.91 Determination of recoupment amounts.

(a) If payments for the Federal share of compensation have been made for a calendar year, and Treasury determines that insured loss information is sufficiently developed and credible to serve as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory or discretionary recoupment amounts for that calendar year.

(b)(1) Within 90 days after certification of an act of terrorism, the Secretary shall publish in the **Federal Register** an estimate of aggregate insured losses which shall be used as the basis for initially determining whether mandatory recoupment will be required.

(2) If at any time Treasury projects that payments for the Federal share of compensation will be made for a calendar year, and that in order to meet the collection timing requirements of section 103(e)(7)(E) of the Act it is necessary to use an estimate of such payments as a basis for calculating recoupment amounts, Treasury will make an initial determination of any mandatory recoupment amounts for that calendar year.

(c) Following the initial determination of recoupment amounts for a calendar year, Treasury will recalculate any mandatory or discretionary recoupment amount as necessary and appropriate, and at least annually, until a final recoupment amount for the calendar year is determined. Treasury will compare any recalculated recoupment amount to amounts already remitted and/or to be remitted to Treasury for a Federal terrorism policy surcharge previously established to determine whether any additional amount will be recouped by Treasury.

(d) For the purpose of determining initial or recalculated recoupment amounts, Treasury may issue a data call to insurers for insurer deductible and insured loss information by calendar year. Treasury's determination of the aggregate amount of insured losses from Program Trigger Events of all insurers for a calendar year will be based on the amounts reported in response to a data call and any other information Treasury in its discretion considers appropriate. Submission of data in response to a data call shall be on a form promulgated by Treasury.

§ 50.92 Establishment of Federal terrorism policy surcharge.

(a) Treasury will establish the Federal terrorism policy surcharge based on the following factors and considerations:

(1) In the case of a mandatory recoupment amount, the requirement to collect 140 percent of that amount;

(2) The total dollar amount to be recouped as a percentage of the latest available annual aggregate industry direct written premium information;

(3) The adjustment factors for terrorism loss risk-spreading premiums described in section 103(e)(8)(D) of the Act;

(4) The annual 3 percent limitation on terrorism loss risk-spreading premiums collected on a discretionary basis as provided in section 103(e)(8)(C) of the Act;

(5) A preferred minimum initial assessment period of one full year and subsequent extension periods in full year increments;

(6) The collection timing requirements of section 103(e)(8)(E) of the Act;

(7) The likelihood that the amount of the Federal terrorism policy surcharge may result in the collection of an aggregate recoupment amount in excess of the planned recoupment amount; and

(8) Such other factors as the Secretary considers appropriate to take into account.

(b) The Federal terrorism policy surcharge shall be the obligation of the policyholder and is payable to the insurer with the premium for a property and casualty insurance policy in effect during the assessment period established by Treasury. See § 50.94(c).

§ 50.93 Notification of recoupment.

(a) Treasury will provide notifications of recoupment through publication of notices in the **Federal Register** or in another manner Treasury deems appropriate, based upon the circumstances of the certified act(s) of terrorism under consideration.

(b) Treasury will provide reasonable advance notice to insurers of any initial Federal terrorism policy surcharge effective date. This effective date shall be January 1 of the calendar year following publication of the notice, unless such date would not provide for sufficient notice of implementation while meeting the collection timing requirements of section 103(e)(8)(E) of the Act.

(c) Treasury will provide reasonable advance notice to insurers of any modification or cessation of the Federal terrorism policy surcharge.

(d) Treasury will provide notification to insurers annually as to the continuation of the Federal terrorism policy surcharge.

§ 50.94 Collecting the surcharge.

(a) Insurers shall collect a Federal terrorism policy surcharge from policyholders as required by Treasury.

(b) Policies subject to the Federal terrorism policy surcharge are those for which direct written premium is reported on commercial lines of business on the NAIC's Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14) as provided in § 50.4(w)(1), or equivalently reported.

(c) For policies subject to the Federal terrorism policy surcharge, the surcharge shall be imposed and

collected on a written premium basis for policies that become effective or renew during the assessment period. All new, renewal, mid-term, and audit premiums for a policy term are subject to the surcharge in effect on the policy term effective date. Notwithstanding this paragraph, if the premium for a policy term that would otherwise be subject to the surcharge is revised after the end of the reporting period described in § 50.95(e), then any additional premium attributable to such revision is not subject to the Surcharge. For purposes of this Subpart:

(1) Written premium basis means the premium amount charged a policyholder by an insurer for property and casualty insurance, including all premiums, policy expense constants and fees defined as premium pursuant to the Statements of Statutory Accounting Principles established by the NAIC, as adopted by the state for which the premium will be reported.

(2) In the case of a policy providing multiple insurance coverages, if an insurer cannot identify the premium amount charged a policyholder specifically for property and casualty insurance under the policy, then:

(i) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is *de minimis* to the total premium for the policy, the insurer may impose and collect from the policyholder a surcharge amount based on the total premium for the policy, but

(ii) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is not *de minimis,* the insurer shall impose and collect from the policyholder a Surcharge amount based on a reasonable estimate of the premium amount for the property and casualty insurance coverage under the policy.

(3) The Federal terrorism policy surcharge is not considered premium.

(d) A policyholder must pay the applicable Federal terrorism policy surcharge when due. The insurer shall have such rights and remedies to enforce the collection of the surcharge that are the equivalent to those that exist under applicable state or other law for nonpayment of premium.

(e) When an insurer returns an unearned premium, or otherwise refunds premium to a policyholder, it shall also return any Federal terrorism policy surcharge collected that is attributable to the refunded unearned premium. Notwithstanding this paragraph, if the written premium for a policy is revised and refunded after the end of the reporting period described in § 50.95(e), then the insurer is not required to refund any Surcharge that is attributable to the refunded premium.

(f) Notwithstanding paragraphs (a), (b), and (c) of this section, if the expense of collecting the Federal terrorism policy surcharge from all policyholders of an insurer during an assessment period exceeds the amount of the Surcharges anticipated to be collected, such insurer may satisfy its obligation to collect by omitting actual collection and instead remitting to Treasury the amount otherwise due.

(g) The Federal terrorism policy surcharge is repayment of Federal financial assistance in an amount required by law. No fee or commission shall be charged on the Federal terrorism policy surcharge.

§ 50.95 Remitting the surcharge.

(a) Each insurer shall report direct written premium and Federal terrorism policy surcharges to Treasury on a monthly and annual basis during the assessment period. Reporting will be on a form prescribed by Treasury and will be due according to the following schedule:

(1) *Monthly:* From the beginning of the assessment period through November, on the last business day of the calendar month following the month for which premium is reported, and

(2) *Annually:* March 1 for the prior calendar year.

(b) The monthly statements provided to Treasury will include the following:

(1) Cumulative calendar year direct written premium adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year.

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) Insurer certification of the submission.

(c) The annual statements to be provided to Treasury will include the following:

(1) Direct written premium, adjusted for premium not subject to the Federal terrorism policy surcharge, summarized by policy year and by commercial line of insurance as specified in § 50.4(w).

(2) The aggregate Federal terrorism policy surcharge amount calculated by applying the established surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) In the case of an insurer that has chosen not to collect the Federal terrorism policy surcharge from its policyholders as provided in § 50.94(f), a certification that the expense of collecting the Surcharge during the assessment period would have exceeded the amount of the surcharges collected over the assessment period.

(4) Insurer certification of the submission.

(d) The calculated aggregate Federal terrorism policy surcharge amount, as described in paragraphs (b)(2) and (c)(2) of this section, shall be remitted to Treasury upon submission of each monthly and annual statement. Through its submitted statements, an insurer obtains credit for a refund of any Federal terrorism policy surcharge previously remitted to Treasury that was subsequently returned by the insurer to a policyholder as attributable to refunded premium under § 50.94(e). A negative calculated amount in a monthly or annual statement indicates payment from Treasury is due to the insurer.

(e) Reporting shall continue for the one-year period following the end of the assessment period established by Treasury, unless otherwise permitted by Treasury.

§ 50.96 Insurer responsibility.

Notwithstanding § 50.4(o), for purposes of the collection, reporting and remittance of Federal terrorism policy surcharges to Treasury, the definition of insurer shall not include any affiliate of the insurer.

Subpart K—Federal Cause of Action; Approval of Settlements

§ 50.100 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to Subpart G of this Part, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (d) of this section.

(b) *Jurisdiction.* For each determination described in paragraph (a) of this section, not later than 90 days after the Secretary certifies an act as an act of terrorism, the Judicial Panel on Multidistrict Litigation shall designate a single district court or, if necessary, multiple district courts of the United States that shall have original and exclusive jurisdiction over all actions for any claim (including any claim for loss of property, personal injury, or death) relating to or arising out of an act of terrorism subject to section 107 of the Act.

(c) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism during the effective period of the Program.

(d) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107–42; 49 U.S.C. 40101 note).

§ 50.101 State causes of action preempted.

All State causes of action of any kind for property damage, personal injury, or death arising out of or resulting from an act of terrorism that are otherwise available under state law are preempted, except that, pursuant to section 107(b) of the Act, nothing in this section shall limit in any way the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits the act of terrorism certified by the Secretary.

§ 50.102 Advance approval of settlements.

(a) *Mandatory submission of settlements for advance approval.* Pursuant to section 107(a)(6) of the Act, an insurer shall submit to Treasury for advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses under the Program, when:

(1) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving personal injury or death in the aggregate is $2 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled; or

(2) Any portion of the proposed settlement amount that is attributable to an insured loss or losses involving property damage (including loss of use) in the aggregate is $10 million or more per third-party claimant, regardless of the number of causes of action or insured losses being settled.

(b) *Discretionary review of other settlements.* Notwithstanding paragraph (a) of this section, Treasury may require that an insurer submit for review and advance approval any proposed agreement to settle or compromise any Federal cause of action for property damage, personal injury, or death, asserted by a third-party or parties against an insured, involving an insured loss, all or part of the payment of which the insurer intends to include in its aggregate insured losses for purposes of calculating the insurer deductible or the Federal share of compensation of its insured losses where the settlement amounts are below the applicable monetary thresholds identified in paragraphs (a)(1) and (2) of this section.

(c) *Factors.* In determining whether to approve a proposed settlement, Treasury will consider the nature of the loss, the facts and circumstances surrounding the loss, and other factors such as whether:

(1) The proposed settlement compensates for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy, as certified by the insurer pursuant to § 50.103(d)(2);

(2) Any amount of the proposed settlement is attributable to punitive or exemplary damages intended to punish or deter (whether or not specifically so described as such damages);

(3) The settlement amount offsets amounts received from the United States pursuant to any other Federal program;

(4) The settlement amount does not include any items such as fees and expenses of attorneys, experts, and other professionals that have caused the insured losses under the underlying commercial property and casualty insurance policy to be overstated; and

(5) Any other criteria that Treasury may consider appropriate, depending on the facts and circumstances surrounding the settlement, including the information contained in § 50.103.

(d) *Settlement without seeking advance approval or despite disapproval.* If an insurer settles a cause of action or agrees to the settlement of a cause of action without submitting the proposed settlement for Treasury's advance approval in accordance with paragraph (a) or (b) of this section, and in accordance with § 50.103 or despite Treasury's disapproval of the proposed settlement, the insurer will not be entitled to include the paid settlement amount (or portion of the settlement amount, to the extent partially disapproved) in its aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses, unless the insurer can demonstrate, to the satisfaction of Treasury, extenuating circumstances.

§ 50.103 Procedure for requesting approval of proposed settlements.

(a) *Submission of notice.* Insurers must request advance approval of a proposed settlement by submitting a notice of the proposed settlement and other required information in writing to the Terrorism Risk Insurance Program Office or its designated representative. The address where notices are to be submitted will be available at *https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx* following any certification of an act of terrorism pursuant to section 102(1) of the Act.

(b) *Complete notice.* Treasury will review requests for advance approval and determine whether additional information is needed to complete the notice.

(c) *Treasury response or deemed approval.* Within 30 days after Treasury's receipt of a complete notice, or as extended in writing by Treasury, Treasury may issue a written response and indicate its partial or full approval or rejection of the proposed settlement. If Treasury does not issue a response within 30 days after Treasury's receipt of a complete notice, unless extended in writing by Treasury, the request for advance approval is deemed approved by Treasury. Any settlement is still subject to review under the claim procedures pursuant to § 50.80.

(d) *Notice format.* A notice of a proposed settlement should be entitled, ''Notice of Proposed Settlement—Request for Approval,'' and should provide the full name and address of the submitting insurer and the name, title, address, and telephone number of the designated contact person. An insurer must provide all relevant information, including the following, as applicable:

(1) A brief description of the claim against the insured, the amount of the claim, the operative policy terms, and defenses to coverage;

(2) A certification by the insurer that the settlement is for a third-party's loss, the liability for which is an insured loss under the terms and conditions of the underlying commercial property and casualty insurance policy;

(3) A brief description of all damages allegedly sustained and an itemized statement of all damages by category (*i.e.,* actual, economic and non-economic loss, punitive damages, etc.);

(4) A statement from the insurer or its attorney in support of the settlement;

(5) The total dollar amount of the proposed settlement and the amount of the proposed settlement which is an insured loss;

(6) Indication as to whether the settlement was negotiated by counsel;

(7) The amount to be paid that will compensate for any items such as fees and expenses of attorneys, experts, and other professionals for their services and expenses related to the insured loss and/or settlement and the net amount to be received by the third-party after such payment;

(8) The amount(s) received from the United States pursuant to any other Federal program(s) for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) Other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to a specific policy, coverage and/or aggregate limits;

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer; and

(v) Any other relevant agreement requested by Treasury.

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.104 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy with respect to any losses the payment of which the insurer intends to include in its insurer deductible or the aggregate insured losses for purposes of calculating the Federal share of compensation of its insured losses and shall, unless upon request the United States agrees in writing to forbear from exercising such right, preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the subrogation right of the United States.

Subpart L—Cap on Annual Liability

§ 50.110 Cap on annual liability.

Pursuant to section 103 of the Act, if the aggregate insured losses exceed $100,000,000,000 during a calendar year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000;

(b) An insurer that has met its insurer deductible shall not be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.111 Notice to Congress.

Pursuant to section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000 for the calendar year in which the event occurs. Such initial estimate may be based on insured loss amounts as compiled by insurance industry statistical organizations, data previously collected by the Secretary, and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any calendar year.

§ 50.112 Determination of *pro rata* share.

(a) *Pro rata loss percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under section 103(e)(2)(A) of the Act.

(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a calendar year, then Treasury will determine a PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject calendar year, as specified in § 50.113, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.114);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a calendar year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and, after consulting with the relevant state authorities, may initiate the action described in either paragraph (e)(1) or (2) of this section.

(1) *Hiatus in payments.* Call a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

(2) *Determine an interim PRLP.* (i) An interim PRLP is an amount determined without the availability of information necessary for consideration of all factors listed in § 50.112(b). It is a conservatively low percentage amount determined in order to facilitate initial partial claim payments by insurers after an act of terrorism and prior to the time that information becomes available to determine a PRLP based on consideration of the factors listed in § 50.112(b).

(ii) In such a circumstance, Treasury will determine a PRLP to replace the interim PRLP as quickly as possible. The PRLP, as later determined, will be

effective retroactively as of the effective date of the interim PRLP. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the interim PRLP, or as later replaced by the PRLP as appropriate.

§ 50.113 Application of *pro rata* share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses in the absence of an agreement on a complete and final settlement as evidenced by a signed settlement agreement or other means reviewable by a third party as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro rata* share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid.

(b) *All policies.* If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid as of the effective date of the PRLP or the amount computed by applying the PRLP to the estimated or actual final claim settlement amount that would otherwise be paid.

(c) *Certain workers' compensation insurance policies.* If an insurer's payments under a workers' compensation policy cumulatively exceed the amount computed by applying the PRLP to the estimated or actual final claim settlement amount that would otherwise be paid because such estimated or actual final settlement amount is reduced from a previous estimate, then the insurer may request a review and adjustment by Treasury in the calculation of the Federal share of compensation. In requesting such a review, the insurer must submit information to supplement its Certification of Loss demonstrating a reasonable estimate invalidated by unexpected conditions differing from prior assumptions including, but not limited to, an explanation and the basis for the prior assumptions.

(d) If an insurer has not yet made payments in excess of its insurer deductible, the rules in this paragraph apply.

(1) If the insurer estimates that it will exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer shall apply the PRLP as of the effective date specified in § 50.112(b).

(2)(i) If the insurer estimates that it will not exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer may make payments on the same basis as prior to the effective date of the PRLP. The insurer may also make payments on the basis of applying some other *pro rata* amount it determines that is greater than the PRLP, where the insurer estimates that application of such other *pro rata* amount will result in it not exceeding its insurer deductible. The insurer remains liable for losses in accordance with § 50.115(c).

(ii) If an insurer estimates that it will not exceed its insurer deductible and has made payments on the basis provided in paragraph (d)(2)(i) of this section, but thereafter reaches its insurer deductible, then the insurer shall apply the PRLP to any remaining insured losses. When such an insurer submits a claim for the Federal share of compensation, the amount of the insurer's losses will be deemed to be the amount it would have paid if it had applied the PRLP as of the effective date, and the Federal share of compensation will be calculated on that amount. However, an insurer may request an exception if it can demonstrate that its estimate was invalidated as a result of insured losses from a subsequent act of terrorism.

§ 50.114 Data call authority.

For the purpose of determining initial or recalculated PRLPs, Treasury may issue a data call to insurers for insured loss information, seeking information in addition to any information provided to Treasury under subparts F and H of this part.

§ 50.115 Final amount.

(a) Treasury shall determine if, as a final proration, remaining insured loss payments, as well as adjustments to previous insured loss payments, can be made by insurers based on an adjusted PLRP, and aggregate insured losses still remain within the cap on annual liability. In such a circumstance, Treasury will notify insurers as to the final PRLP and its application to insured losses.

(b) If paragraph (a) of this section applies, Treasury may require, as part of the insurer submission for the Federal share of compensation for insured losses, a supplementary explanation regarding how additional payments will be provided on previously settled insured losses.

(c) An insurer that has prorated its insured losses, but that has not met its insurer deductible, remains liable for loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

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Amias Moore Gerety,

Acting Assistant Secretary for Financial Institutions.

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