

Office of the Secretary of the Treasury

§ 50.4

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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 and claimants.

§ 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;

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(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 con-

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trol as defined in paragraph (c)(2)(i)(A) or (c)(2)(i)(B) 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, including any affiliate thereof, 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 in-

surer 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

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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

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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.

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(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;

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(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

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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 (as reported on its Annual Statement for state regulatory purposes at Page 3, Line 37, Column 1, or as calculated in similar fashion by participating insurers that do not file an Annual Statement) 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

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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 (1) 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 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;

(2) Interim Guidance II issued by Treasury on December 18, 2002;