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**Kathy A. Weiner,**

*Director, Office of Information Technology and Support Systems, Federal Railroad Administration.*

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## **NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION**

### **Public Health Authority Notification**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** NHTSA is publishing this notice to inform hospitals and other health care organizations of its status as a "public health authority" under the medical privacy requirements of the Health Insurance Portability and Accountability Act of 1996.

**FOR FURTHER INFORMATION CONTACT:** Tyler Bolden, NHTSA, Office of Chief Counsel, 400 7th Street, SW Suite 5219, Washington, DC 20590. 202-366-1834.

**SUPPLEMENTARY INFORMATION:** The Health Insurance Portability and Accountability Act of 1996 ("HIPAA") was enacted to improve the portability and continuity of health insurance coverage, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes (Pub. L. No. 104-191, 110 Stat. 196 (1996)). The Administrative Simplification subtitle of HIPAA authorized the Department of Health and Human Services ("HHS") to promulgate medical privacy regulations to protect the privacy of individually-identifiable electronic health information. These regulations (the "Privacy Rule") were published by HHS on December 28, 2000 and established the standards to identify the rights of individuals who are the subjects of "protected health information," which is defined as individually-identifiable health information; provide procedures for the exercise of those rights; and define the general rules for permitted and required uses and disclosures of protected health information (45 CFR Parts 160-164).

Beginning April 14, 2003, the Privacy Rule prohibits health plans, health care clearinghouses and selected health care providers from using or disclosing protected health information, except as permitted by certain exceptions (45 CFR 164.502). Under one exception, the Privacy Rule permits the disclosure of protected health information to public

health authorities authorized to "collect or receive such information for the purpose of preventing or controlling disease, injury, or disability . . ." (45 CFR 164.512(b)(1)(i)). A "public health authority" includes "an agency or authority of the United States . . . that is responsible for public health matters as part of its official mandate" (45 CFR 164.501). Examples of public health matters include the reporting of disease, injury, or vital events; and public health surveillance, public health investigations or public health interventions (45 CFR 164.512(b)(1)(i)).

Guidance issued by HHS on December 2, 2002 further addressed the issue of disclosures to public health authorities. Specifically, the guidance stated that:

The HIPAA Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to protected health information to carry out their public health mission . . . the [Privacy] Rule permits covered entities to disclose protected health information without authorization for specified public health purposes.

NHTSA's mission is to prevent and reduce deaths, injuries and economic losses resulting from automotive travel on our nation's roadways. To accomplish this mission, NHTSA has statutory authority to conduct crash injury research and collect relevant data in the interest of public health. Specifically, NHTSA is authorized to: (1) Engage in research on all phases of highway safety and traffic conditions; (2) undertake collaborative research and development projects with non-Federal entities for the purposes of crash data collection and analysis; and (3) conduct research and collect information to determine the relationship between motor vehicles and accidents, and personal injury or deaths resulting from such accidents (See 23 U.S.C. 403(a)(1), 23 U.S.C. 403(f) and 49 U.S.C. 30168(a)). The term "safety" is defined as "highway safety and highway safety-related research and development, including research and development relating to highway and driver characteristics, crash investigations, communications, emergency medical care, and transportation of the injured" (23 U.S.C. 403(a)(3)).

In light of the above-referenced statutory authority, which demonstrates a responsibility for public health matters as part of the agency's mandate, NHTSA has determined that it is a public health authority within the meaning of the Privacy Rule. As a public health authority, NHTSA is entitled to receive protected health

information from hospitals and other health care organizations, without written consent or authorization, because disclosures of protected health information to a public health authority are permitted disclosures under the Privacy Rule (45 CFR 164.502(a)(1)(vi)).

Issued on: March 21, 2003.

**Jeffrey W. Runge,**

*Administrator, National Highway Traffic Safety Administration.*

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## **DEPARTMENT OF THE TREASURY**

### **Departmental Offices; Interim Guidance Providing Procedure for Rebuttal of Presumption of Control of an Insurer for Purposes of the Terrorism Risk Insurance Program**

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice.

**SUMMARY:** This notice provides interim guidance to insurers that wish to rebut a presumption of control by the Department of Treasury as administrator of the Terrorism Risk Insurance Program.

**DATES:** This notice is effective immediately and will remain in effect until superceded by regulations or by subsequent notice.

**FOR FURTHER INFORMATION CONTACT:** Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy 202-622-2730; Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking and Finance) 202-622-0480.

**SUPPLEMENTARY INFORMATION:** This notice provides interim guidance to assist insurers that wish to rebut a presumption of controlling influence for purposes of the Terrorism Risk Insurance Program (the Program) established by Title I of the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297) prior to the issuance by the Department of Treasury (Treasury) of regulations incorporating a procedure for rebuttal of a controlling influence presumption. This interim guidance remains in effect until superceded by regulations or subsequent notice.

### **I. Background**

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (the Act). The Act became effective immediately. It establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting

from an "act of terrorism," as defined in the Act. The Program is administered and implemented by Treasury and will sunset on December 31, 2005.

Section 102(3) of the Act sets forth the Act's definition of the term "control." Treasury issued an interim final rule containing Program definitions, including the definition of an "affiliate" of an "insurer." 68 FR 9803 (February 28, 2003). The definition of "affiliate" in the interim final rule incorporates the three categories in the statutory definition of control: (a) If an insurer directly or indirectly owns, controls or has the power to vote 25 percent or more of any class of voting securities of the other insurer; (b) if an insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or (c) even if there is no control under (a) or (b), if 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.

In the interim final rule at 31 CFR 50.5(c)(2), Treasury established several rebuttable presumptions for purposes of a determination of controlling influence, and, therefore, of control by an insurer over another insurer for purposes of the Program. If an insurer controls another insurer, then, for example, their direct earned premiums are consolidated for purposes of calculating the insurer deductible. The rebuttable presumptions of control in the interim final rule apply unless (i) subsequently modified by Treasury by regulation or order, or (ii) an affected insurer or insurers makes a rebuttal submission to Treasury, as set forth below, and Treasury determines that no control relationship exists for purposes of the Program.

## II. Interim Guidance

Treasury will be issuing regulations containing a procedure for rebutting presumptions of a controlling influence for purposes of the Program. Treasury is issuing the following procedure as interim guidance for an insurer (as that term is defined by section 102 (6) of the Act and under Treasury's interim final regulations) to follow if such insurer wishes to rebut a presumption of controlling influence prior to the issuance of such regulations. This rebuttal procedure may also be found on Treasury's Terrorism Risk Insurance Program Web site at <http://www.treasury.gov/trip>.

### *Procedure for Rebutting Presumption of Control*

(1) An insurer or insurers may make a written submission to Treasury to rebut a presumption, established under 31 CFR 50.5(c)(2), of a controlling influence by the insurer under the Program. Prior to establishment of a Terrorism Risk Insurance Program Office within Treasury, such rebuttal submissions shall be made to the Office of Financial Institutions Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220. The submission to rebut a controlling influence presumption should be entitled "Submission to Rebut Control Presumption" and should provide the full name and address of the submitting insurer(s) rebutting control and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(2) Following receipt of a rebuttal submission, Treasury will review the submission and determine whether Treasury needs additional written or orally presented information from the submitting insurer in order to determine whether the presumption of controlling influence has been rebutted. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(3) A rebuttal submission by an insurer or insurers under the Program shall provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers; explain in detail why no controlling influence exists and provide support for why the rebuttable presumption should not apply in light of particular facts and circumstances and the Act's language, structure and purpose.

(a) *General Information for Rebuttal Submission.* The types of information that Treasury may consider in reviewing rebuttal submissions include:

(i) The ownership structure of the insurer that is subject to the presumption of control, such as an organization chart and whether its stock or other capital is widely or closely held;

(ii) The degree to which the ownership or capacity providers of the insurer share in the profits and losses of the insurer;

(iii) The management structure of the insurer, including a description and copies of management contracts and any informal management arrangements;

(iv) Information on financial support provided by the insurer presumed in

control to the insurer presumed to be controlled, including the nature and amount of debt instruments held by one insurer in the other and information on financial support provided by companies other than the insurer presumed to be in control;

(v) Information on who makes management, investment or other significant business decisions for the insurer presumed to be controlled and how these are made and similar information; and

(vi) Any other information that may be relevant to the determination of control.

(b) *Information for Rebuttal of Specific Presumptions.* In addition to the general information described above in (a), the types of information Treasury may review in connection with a rebuttal of a specific presumption includes the following:

(i) In rebutting a presumption based on a State determination of control, the insurer's submission must include a copy of the State's determination of control, the name, title and telephone number of the head of the appropriate State agency along with copies of relevant State regulations or rulings and citations to relevant statutes;

(ii) In rebutting a presumption based on provision by one insurer of 25 percent or more of capital, policyholder surplus or corporate capital, the insurer's submission should include financial and accounting statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators; and

(iii) In rebutting a presumption based on the fact that an insurer supplies 25 percent or more of the underwriting capacity for that year to another insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, the insurer submission shall include financial statements for the most recent calendar year and copies of relevant financial and control information provided to State regulators.

(c) *Confidential Information.* Any confidential business or trade secret information submitted to Treasury in a rebuttal submission should be clearly marked. (4) Treasury shall review and consider the insurer submission and other relevant facts and circumstances, including information provided by the insurer's State regulator. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any oral presentation, Treasury shall issue a final determination of whether a submitter has rebutted the relevant regulatory

presumption of a controlling relationship for purposes of the Program. The determination shall set forth Treasury's basis for its determination.

### III . Paperwork Reduction Act

The collection of information contained in this interim guidance has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) under control number 1505—0190. 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.

This information is required in order for Treasury to determine whether an insurer has rebutted the presumption of control. The collection of information is mandatory with respect to an insurer seeking to rebut the presumption of control. The estimated average burden associated with the collection of information in this final rule is 40 hours per respondent.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Office of Financial Institutions

Policy, Terrorism Risk Insurance Program, Room 3160 Annex, Department of Treasury, 1500 Pennsylvania Ave, NW., Washington, DC 20220 and to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503.

Dated: March 21, 2003.

**Wayne A. Abernathy,**

*Assistant Secretary of the Treasury.*

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