

consumers by: (1) Increasing the number of carriers that are required to adopt tarmac delay contingency plans and the airports at which they must adhere to the plan's terms; (2) increasing the number of carriers that are required to report tarmac delay information to the Department; (3) expanding the group of carriers that are required to adopt, follow, and audit customer service plans and establishing minimum standards for the subjects all carriers must cover in such plans; (4) requiring carriers to include their contingency plans and customer service plans in their contracts of carriage; (5) increasing the number of carriers that must respond to consumer complaints; (6) enhancing protections afforded passengers in oversales situations, including increasing the maximum denied boarding compensation airlines must pay to passengers bumped from flights; (7) strengthening, codifying and clarifying the Department's enforcement policies concerning air transportation price advertising practices; (8) requiring carriers to notify consumers of optional fees related to air transportation and of increases in baggage fees; (9) prohibiting post-purchase price increases; (10) requiring carriers to provide passengers timely notice of flight status changes such as delays and cancellations; (11) prohibiting carriers from imposing unfair contract of carriage choice-of-forum provisions; and (12) soliciting comments on options to provide greater access to air travel for persons with peanut allergies. See 75 FR 32318 (June 8, 2010). Comments on the matters proposed were to be received 60 days after publication of the NPRM, or by August 9, 2010.

We received requests for an extension of time in the comment period for this rulemaking by the Airport Council International (ACI), Association of Asia Pacific Airlines (AAPA), Association of European Airlines (AEA), Latin American & Caribbean Air Transport Association (ALTA), National Airlines Council of Canada (NACC), International Air Carrier Association (IACA), International Air Transport Association (IATA) and Societe Air France & KLM Royal Dutch. We also received a joint statement in support of IATA's request for an extension of the comment period by the Air Transport Association (ATA), Regional Airline Association (RAA) and Air Carrier Association of America (ACAA). According to these requests, the extension of time is needed so the airlines have sufficient time to review and comment on the extensive and complex proposed rule. More

specifically, the petitioners note, among other things, the need to consult with multiple offices on the cost, timing and feasibility of the proposals, the need to analyze any international law implications, the need to evaluate and respond to the preliminary regulatory analysis, the need to coordinate and assess several areas addressed in this proposal against other U.S. Government proposals or requirements, the need to understand the implications in this proposal considering its breadth, and the need to address the various specific issues discussed in the preamble on which comments are sought but for which there is no corresponding proposed regulatory text. Most of the petitioners requested an additional 60 days time, a few requested an additional 90 days time, and one supported an additional 30 days time.

While we concur with the requests for an extension of the comment period, we believe that a 90-day or 60-day extension would be excessive. We have decided to grant an extension of 45 days, or until September 23, 2010, for the public to comment on the NPRM. In doing so, we have balanced the stated need for additional time for comments with the need to proceed expeditiously with this important rulemaking. We take note of the fact that with the additional 45 days we are granting here, interested parties will have a total of 105 days to comment on the proposals, which we believe is adequate time for analysis and coordination regarding the proposals. Accordingly, the Department finds that good cause exists to extend the time for comments on the proposed rule from August 9, 2010, to September 23, 2010. We do not anticipate any further extension of the comment period for this rulemaking.

Issued this 29th day of July, 2010, in Washington, DC under authority assigned to me by 14 CFR 385.17(c).

**Neil R. Eisner,**

*Assistant General Counsel, Office of Regulation and Enforcement, U.S. Department of Transportation.*

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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

#### RIN 1505-AC24

#### Terrorism Risk Insurance Program; Final Netting

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Treasury ("Treasury") is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 ("TRIA" or "the Act"), as amended by the Terrorism Risk Insurance Extension Act of 2005 ("Extension Act") and the Terrorism Risk Insurance Program Reauthorization Act of 2007 ("Reauthorization Act"). The Act established a temporary Terrorism Risk Insurance Program ("TRIP" or "Program") under which the Federal Government would share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers. The Reauthorization Act has now extended the Program until December 31, 2014. This proposed rule is the latest in a series of regulations Treasury has issued to implement the Act. The proposed rule incorporates and implements statutory requirements of the Act for the final netting of payments under the Program. In particular, the proposed rule would establish procedures by which, after the Secretary has determined that claims for the Federal share of insured losses arising from a particular Program Year shall be considered final, a final netting of payments to or from insurers will be accomplished. The rule generally builds upon previous rules issued by Treasury.

**DATES:** Written comments must be received on or before October 4, 2010.

**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: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with "TRIA Final Netting Proposed Rule Comments." Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not disclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure. Comments will be available for public inspection on the Federal eRulemaking Portal and by appointment at the TRIP Office. To make appointments, call (202) 622-6770 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:**

James P. Brown, Senior Analyst,  
Terrorism Risk Insurance Program, (202)  
622-6770 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****I. Background**

On November 26, 2002, the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322) was enacted. The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, including the issuance of regulations and procedures. The Program provides a federal backstop for insured losses from an act of terrorism.

The Program was originally set to expire on December 31, 2005. On December 22, 2005, the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109-144, 119 Stat. 2660) was enacted, which extended the Program through December 31, 2007. On December 26, 2007, the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110-160, 121 Stat. 1839), which extends the Program through December 31, 2014, was enacted.

**II. Previous Rulemaking**

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has issued interim guidances to be relied upon by insurers until superseded by regulations. Rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, can be found in Subparts A, B, and C of 31 CFR part 50. Treasury's rules applying provisions of the Act to State residual market insurance entities and State workers' compensation funds are at Subpart D of 31 CFR part 50. Rules setting forth procedures for filing claims for payment of the Federal share of compensation for insured losses are at Subpart F of 31 CFR part 50. Subpart G of 31 CFR part 50 contains rules on audit and

recordkeeping requirements for insurers. Subpart H contains recoupment and surcharge procedures, while Subpart J of 31 CFR part 50 contains rules regarding the cap on annual liability. Subpart I of 31 CFR part 50 contains Treasury's rules implementing the litigation management provisions of section 107 of the Act.

**III. The Proposed Rule**

This proposed rule would add § 50.56 to subpart F of part 50, which comprises Treasury's regulations implementing the Act. It also proposes to amend § 50.53 of subpart F.

**A. Overview**

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. Under this authority, this proposed rule would establish procedures by which, after the Secretary has determined that claims for the Federal share of insured losses arising from a particular Program Year shall be considered final, a final netting of payments to or from insurers will be accomplished.

The intent of this proposed rule is to provide a process by which Treasury would close out its claims operation for insured losses from a Program Year. The proposed rule includes some flexibility in how and when steps are taken to accomplish this in order to be able to effectively address future circumstances. As a simplified description, however, Treasury envisions that the steps in the process to close out its claims operation would likely be: (1) Treasury notifies insurers of the date by which all insured losses must be finally reported to Treasury; (2) insurers submit their certifications of loss by that date; (3) Treasury reviews the submissions and requires insurers to submit information supporting a commutation of claims for the Federal share of insured losses irrespective of claim status; (4) Treasury reviews insurer submissions and conducts claims audits as needed; and, (5) Treasury makes a final payment to each insurer that discharges Treasury's payment obligation to the insurer. The description of the proposed rule below provides more detail and discusses certain exceptions to this process for closing out the claims operation. Treasury seeks comment on all aspects of the proposed rule from interested persons and entities.

**B. Description of the Proposed Rule**

The major provisions of the proposed rule are as follows:

**1. Final Netting Date**

§ 50.56(b) of the proposed rule provides that the Secretary may determine a Final Netting Date for a Program Year. This would be the date by which an insurer must report to Treasury all underlying losses that have been reported to the insurer by its policyholders. Reporting to Treasury would be on the insurer's bordereaux in support of its Certifications of Loss. Rather than for a particular act of terrorism, the Final Netting Date would apply to a particular Program Year. Treasury believes that this is simpler and consistent operationally with how the TRIP claims process is administered, including treatment of deductibles, insured loss reporting and review of insurer claims for the Federal share of losses.

The criteria that would guide the determination of a Final Netting Date (§ 50.56(b)(1) of the proposed rule) primarily relate to amounts of insured losses that are yet to be paid, and the rate at which insured losses are developing. Certain lines of business may require longer periods for the losses to approach a final amount because of the nature of the losses. Based on discussions with experts in the field of reinsurance concerning sunset clauses in reinsurance contracts, general rules of thumb, and consideration of various statutes of limitation, Treasury believes that a reasonable period of time prior to Final Netting could be as long as 10 years, but is very likely to be in the range of 5-7 years. The proposed rule does not specify such timeframes, however. The determination of a Final Netting Date would be based on the following factors and considerations: (i) Amounts of case reserves previously 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 bordereaux 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; (vi) common business practices; (vii) issues that are delaying final resolution of insured losses; (viii) the applicability of the liability limitations and procedures under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 may

affect final resolution of insured losses; (ix) issues related to the cap on annual liability for insurer losses; (x) Treasury's claims administration costs; and (xi) such other factors as the Secretary considers important.

## 2. Notice of Final Netting Date

§ 50.56(b)(2) of the proposed rule provides that Treasury would give notice of a Final Netting Date and its application to a specific Program Year at least 180 days in advance of such a date.

## 3. Post-Final Netting Date Claims

Treasury has examined a couple of alternatives for defining and implementing the Final Netting Date. One possibility was to define the Final Netting Date as the date by which all insured losses would be considered final for purposes of claiming the Federal share. Such a specific cut-off could be problematic, however, for insured losses under litigation or otherwise unable to be settled. In addition, Treasury is concerned that this approach could encourage an imprudent rush to settle claims merely to ensure that they are eligible for the Federal share.

Another alternative, which is set forth in proposed § 50.56(c), is to define the Final Netting Date to be the cut-off for any new underlying insured losses to be reported to Treasury. After this date, supplemental certifications of loss for purposes of claiming the Federal share of compensation would only be allowed to provide updated information for the underlying losses already 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 (6 U.S.C. *et seq.*). In the case of workers' compensation, where the TRIP bordereau requires the claim to be reported at the policy level with the number of claimants, but not a detailed listing of claimants, updated payment information would be allowed for the number of workers' compensation claimants already included, but no new claimants could be added. The Final Netting Date will be established long enough after the certified act of terrorism so that further significant loss development for reported losses is unlikely.

## 4. Commutation

A commutation generally is the payment of a lump sum present value of future loss payments in lieu of making payments for losses as they come due in the future. After the establishment of a

Final Netting Date, proposed § 50.56(d) provides that 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.

Commutation of reinsurance losses normally is heavily influenced by estimates of an insurer's Incurred but Not Reported (IBNR) amounts. Under Section 103(b) of TRIA, as a condition for Federal payment, a claim must first be filed with the insurer. In addition, pursuant to § 50.53(b)(2), the claim must have been paid (or must be paid within five business days upon receipt of an advance payment of the Federal share of compensation). Thus, Federal reimbursement ordinarily is based on paid losses while outstanding losses and IBNR amounts are not considered in computing the Federal share of insured losses. Nevertheless, once a Final Netting Date has been determined, it may be in Treasury's or an insurer's interest to commute the insurer's claim for the Federal share of insured losses that have been reported to the insurer and to Treasury, but have not yet been paid by the insurer.

Prior to consummating any commutation, Treasury may elect to conduct an audit of the insurer's insured losses. Treasury may require additional information to be supplied by 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. (*See* Procedural Requirements Section below.) If Treasury notifies an insurer of a commutation requirement, the insurer will have 90 days from the date of notification to submit material required in the notice or 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 owed to the Government. Treasury does not anticipate mandating the use of specific discount factors in determining final payments for commuted amounts. Insurers will be required to justify the factors from which commutation amounts are derived and Treasury will consider them.

Payments of commuted amounts would not be considered to be advance payments requiring a segregated account as described in current § 50.54(d) of the TRIP claims regulations.

Treasury understands that a standard practice in commutation under insurance contracts is for the parties to enter into a commutation and release agreement that serves as the settlement and discharge of both parties' contractual obligations. Because Treasury makes payment of the Federal share of compensation under authority of the Act and not as a matter of contract, Treasury is not proposing that an insurer must sign a release as a condition for payment of a final commuted amount. The conditions for payment, including the discharge of Treasury's obligation and the circumstances under which Treasury may reclaim any payment, are set forth in the regulations. Treasury anticipates, however, that it may provide a statement with any final payment reciting those conditions.

The proposed rule provides that payment by Treasury of a final commuted amount to an insurer is final except under two circumstances. One such circumstance is where 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 an insurer would be required to repay to Treasury those amounts that were not due the insurer. The other circumstance is that additional payments may be made by Treasury under the exception described below.

Because Treasury cannot consider IBNR amounts in establishing final payment, the proposed rule would allow an insurer to request Treasury's reconsideration of its insured losses if there were to be a significant increase due to losses reported to the insurer after the Final Netting Date. The proposed rule states that if within one year after the Final Netting Date, and regardless of commutation, an insurer has additional underlying 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% or more, 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 other conditions for payment have been met, Treasury may reopen and/or extend the insurer's claim for the Federal share of compensation for insured losses for the pertinent Program Year.

## 5. Revision to § 50.53(b)(2)

The proposed rule proposes to amend existing § 50.53(b)(2)(i) of the TRIP claims regulations. § 50.53(b)(2) requires, in part, that an insurer certify

that the underlying losses on its bordereau 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 no longer than five business days after receipt of the Federal share of compensation”. The amendment adds the language “with current payment information” which restricts the certification to insured losses on the bordereau that are currently being paid by the insurer. This clarifies that the reporting of underlying losses that an insurer has not yet paid, nor is about to pay is allowed. The reporting of case reserve or other information may be appropriate even if losses are not currently being paid and this is particularly pertinent when an insurer must report to Treasury all losses reported to the insurer prior to the Final Netting Date.

#### 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.* Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it is hereby certified that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. 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 insurance, with certain specific exclusions, without any reference to the size or scope of the insurer. The proposed rule proposes that the Secretary of the Treasury may, as authorized by the Act, establish a Final Netting Date by which all underlying losses to an insurer’s claim for the Federal share of compensation must be reported to Treasury. Insurers that are affected by these regulations tend to be large businesses; therefore, Treasury has determined that the rule will not affect a substantial number of small entities. In addition, Treasury has determined that the economic impact of the rule is not significant. Unless there is an act of terrorism, and a Federal sharing of compensation for insured losses, there is no economic impact at all. The only potential 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 losses if significant new claims are reported to the insurer subsequent to Final Netting. The economic impact on all commercial property and casualty insurers (including any that might be small entities) should thus be minimal. A regulatory flexibility analysis is therefore not required.

*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 collection of information should be received by October 4, 2010.

*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 (*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 through 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 the collection of information in connection with commutation as proposed at § 50.56(d)(2). The required information and process follow normal business procedures of insurers interacting 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 owed to the Government.

If an act of terrorism is certified under the Act, the number of insurers with losses will be determined by the size and nature of the certified act of terrorism. Because of the extreme uncertainty regarding any such event, a “best estimate” has been developed based on the considered judgment of Treasury. This estimate has 100 insurers sustaining insured losses. Out of this initial number, Treasury estimates that there would be 15 insurers involved in commutation after the determination of a Final Netting Date. The necessary data are routinely generated and reported in the insurance industry. Treasury estimates that an insurer would need 40 hours, on average, to assemble and analyze data and develop a submission to Treasury for commutation. The estimated total onetime burden would be 600 hours (15 insurers times 40 hours). At a blended, fully loaded hourly rate of \$75, the cost would be \$45,000.

#### List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

#### Authority and Issuance

For the reasons set forth above, 31 CFR Part 50 is proposed to be amended as follows:

#### PART 50—TERRORISM RISK INSURANCE PROGRAM

1. The authority citation for part 50 continues to read as follows:

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

2. In § 50.53, paragraph (b)(2)(i) is revised to read as follows:

#### § 50.53 Loss certifications.

\* \* \* \* \*

(b) \* \* \*

(2) \* \* \*

(i) The underlying insured losses listed with current payment information on the bordereau filed pursuant to § 50.53(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;

\* \* \* \* \*

3. Add § 50.56 to subpart F to read as follows:

**§ 50.56 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 Program Year, which for purposes of this section is the date on or before which an insurer must report to Treasury all underlying insured losses that have been reported by its policyholders on the insurer's bordereaux (see § 50.53) in support of its Certifications of Loss for the Program 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 previously 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 bordereaux 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;

(vi) Common business practices;

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

(viii) The applicability of the liability limitations and procedures under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002 may affect final resolution of insured losses;

(ix) Issues related to the cap on annual liability for insurer losses;

(x) Treasury's claims administration costs; and

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

(2) *Notice of Final Netting Date.* Treasury shall announce and publish in the **Federal Register**, or in another manner Treasury deems appropriate, notice of a Final Netting Date and its

application to a specific Program Year at least 180 days in advance of such date.

(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 (6 U.S.C. *et seq.*) 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 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 as they come due in the future, as provided in this section.

(1) In lieu of continued submission of 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 further liabilities to the insurer for the Federal share of compensation for insured losses for the applicable Program Year. In the case of an affiliated group of insurers, the requirements of § 50.54(f) apply, provided that 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 Program Year.

(2) If future claims are to be commuted, Treasury may require additional information to be supplied by 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 the final payment amounts are derived. If Treasury notifies an insurer of a commutation requirement, the insurer will have 90 days from the date of notification to submit material required in the notice or 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 owed to the Government. Treasury may determine that it will not consider commutation until it has completed an audit of an insurer's insured losses.

(3) Payments of commuted amounts are not considered to be advance payments requiring a segregated account as described in § 50.54(d).

(4) Notwithstanding § 50.50(e), 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% or more, 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 other conditions for payment have been met, Treasury may reopen and/or extend the insurer's claim for the Federal share of compensation for insured losses for the pertinent Program Year.

Dated: July 14, 2010.

**Michael S. Barr,**

*Assistant Secretary (Financial Institutions).*

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