

**DEPARTMENT OF THE TREASURY****31 CFR Part 50****Terrorism Risk Insurance Program; Adjustment to Civil Penalty Amount Under the Terrorism Risk Insurance Act of 2002**

**AGENCY:** Departmental Offices, Department of the Treasury.

**ACTION:** Interim final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is amending its regulations to adjust the civil penalty amount provided for under the Terrorism Risk Insurance Act of 2002 (TRIA). This action, including the amount of the adjustment, is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** *Effective date:* December 7, 2016. *Comment date:* Written comments may be submitted on or before January 6, 2017. 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 "Terrorism Risk Insurance Program Civil Penalty Adjustment 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, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-7009 (not a toll free number).

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

TRIA<sup>1</sup> 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 through the Terrorism Risk Insurance Program (TRIP or Program). The Secretary of the Treasury (Secretary) administers the Program; pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Insurance Office assists the Secretary in administering the Program.

Section 104(e) of TRIA authorizes the Secretary to assess civil penalties for certain violations of statutory and regulatory provisions concerning the administration of the Terrorism Risk Insurance Program and the assertions of claims under the Program by participating insurers. The civil penalty amount under TRIA may not exceed the greater of \$1,000,000 or the amount in dispute in the case of any failure to pay, charge, collect, or remit amounts in accordance with requirements of TRIA or its implementing regulations. Treasury recently proposed implementing regulations for this provision for the first time (TRIP Rule).<sup>2</sup> Treasury has never assessed civil penalties under this statute.

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015<sup>3</sup> (Improvements Act) amended the inflation adjustment calculation previously required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended (FCPIA Act).<sup>4</sup> The Improvements Act requires that penalty amounts initially be adjusted for inflation pursuant to a catch-up "cost-of-living adjustment" through an interim final rulemaking. The Improvements Act also requires subsequent annual adjustments no later than January 15 of each year after 2016.

Section 5(b) of the Improvements Act defines the initial cost-of-living adjustment as "the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index for the month of October of the calendar year during

which the amount of such civil monetary penalty was established or adjusted pursuant to law." Section 5(a) requires that any increase be rounded to the nearest multiple of \$1.

**II. Proposed Rulemaking**

In the TRIP Rule, Treasury proposed, among other provisions, adjusting the civil penalties amount based on the formula required by the FCPIA Act before its amendment by the Improvements Act. Adoption of the amount proposed in the TRIP Rule would not comply with the requirements of the Improvement Act. Therefore, when Treasury issues the final TRIP Rule provisions respecting the assessment of civil penalties, the civil penalty amount authorized under Section 104(e) of TRIA will remain the amount reflected in this adjustment.

Because the Improvements Act requires that civil penalty amounts be adjusted by an interim final rulemaking issued no later than July 1, 2016, Treasury is issuing this interim final rule to adjust the existing civil penalty amount under TRIA from \$1,000,000 to \$1,311,850. This adjustment will take effect upon publication of this interim final rule.

This interim final rule also provides for the annual readjustment of the civil penalty amount under TRIA as required by the Improvements Act. Although currently numbered as 31 CFR 50.86, we anticipate that the provisions contained in this interim final rule will be renumbered as 31 CFR 50.83 and included in any TRIP final rules as ultimately issued, pursuant to Treasury's April 1, 2016 Notice of Proposed Rulemaking.

**III. Calculation of Inflation Adjustment**

Under the Improvements Act, Treasury is required to adjust the level of the TRIA civil monetary penalty with an initial "catch up" adjustment through this interim final rulemaking. The calculation is based upon the percentage by which the Consumer Price Index (CPI-U) for October 2002 (the year the TRIA civil penalty was established) exceeds the October 2015 CPI-U. That calculation results in a multiplier of 1.31185, meaning that the CPI-U from 2015 exceeds the CPI-U from 2002 by 31.185%. Based on the original \$1,000,000 civil penalty amount, Treasury is adjusting the current civil penalty amount (with an increase rounded to the nearest dollar, as required by the Improvements Act) to \$1,311,850.

<sup>1</sup> 15 U.S.C. 6701 note (Pub. L. 107-297, 116 Stat. 2322). Because the provisions of TRIA (as amended) appear in a note, instead of particular sections, in the United States Code, the provisions of TRIA are identified by the sections of the public law.

<sup>2</sup> Notice of Proposed Rulemaking, 81 FR 18950, 18972 (proposed 50 CFR 50.82) (April 1, 2016).

<sup>3</sup> Public Law 114-74.

<sup>4</sup> 28 U.S.C. 2461 note.

#### IV. Request for Comments

Treasury invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

##### *Procedural Requirements*

Under the Improvements Act, civil penalties are to be adjusted by interim final rule. Because Treasury must adjust the civil penalties provision of TRIA according to a statutory formula and because the law mandates use of an interim final rule to make the adjustment, Treasury finds that good cause exists to forego publishing a notice of proposed rulemaking and providing opportunity for public comment under the Administrative Procedure Act. 5 U.S.C. 553(b)(3)(B). Because the statute provides for these adjustments to go into effect by August 1, 2016, Treasury finds that good cause exists for this interim final rule to go into effect upon publication. 5 U.S.C. 553(d)(3). Because these adjustments are mandated by statute and do not involve the exercise of Treasury's discretion or any policy judgments, public notice and comment before adopting these amendments as final is unnecessary. Because no general notice of proposed rulemaking is required, the

requirements of the Regulatory Flexibility Act<sup>5</sup> do not apply. Finally, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.<sup>6</sup>

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

Insurance, Terrorism.

For the reasons stated in the preamble, the Department of the Treasury amends 31 CFR part 50 as follows:

#### **PART 50—TERRORISM RISK INSURANCE PROGRAM**

- 1. The authority citation for part 50 is revised 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 Public Law 109–144, 119 Stat. 2660, Pub. L. 110–160, 121 Stat. 1839 and Pub. L. 114–1, 129 Stat. 3 (15 U.S.C. 6701 note); Pub. L. 114–74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

#### **Subpart I—Federal Cause of Action; Approval of Settlements**

- 2. Section 50.86 is added to read as follows:

<sup>5</sup> 5 U.S.C. 601 *et seq.*

<sup>6</sup> 44 U.S.C. 3501 *et seq.*

#### **§ 50.86 Adjustment of civil monetary penalty amount.**

(a) *Catch-up adjustment.* Any penalty under the Act and these regulations may not exceed the greater of \$1,311,850 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.

(b) *Annual adjustment.* The maximum penalty amount that may be assessed under this section will be adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, 28 U.S.C. 2461 note, by January 15 of each year and the updated amount will be posted in the **Federal Register** and on the Treasury Web site at <https://www.treasury.gov/resource-center/fin-mkts/Pages/program.aspx>.

Dated: December 1, 2016.

**Amias Moore Gerety,**

*Acting Assistant Secretary for Financial Institutions.*

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