

**DEPARTMENT OF THE TREASURY****31 CFR Part 50**

RIN 1505-AA96

**Departmental Offices; Terrorism Risk Insurance Program****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. That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This proposed rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, the proposed rule incorporates interim guidance previously issued by Treasury concerning these definitions, but with some modifications. This proposed rule, together with the interim final rule published elsewhere in this separate part of the **Federal Register**, are the first in a series of regulations Treasury will issue to implement the Act.

**DATES:** Written comments may be submitted on or before March 31, 2003.

**ADDRESSES:** Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: [triacomment@do.treas.gov](mailto:triacomment@do.treas.gov). All comments should be captioned with "February 28, 2003 TRIA Comments." Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622-0990 (not a toll-free number).

**FOR FURTHER INFORMATION CONTACT:** Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622-2730, or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622-0480 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****I. The Proposed Rule**

Published elsewhere in this separate part of the **Federal Register** is an interim final rule establishing 31 CFR Part 50, which will comprise Treasury's regulations implementing the Terrorism Risk Insurance Act of 2002 (the Act). The preamble to the interim final rule explains these provisions of the proposed rule in detail, and the text of the interim final rule serves as the text for this proposed rule.

In addition, Treasury specifically solicits public comment on whether the Secretary should prescribe criteria for certain insurers pursuant to the authority provided to Treasury in section 102(6)(C) and, if so, what criteria Treasury should prescribe. First, Treasury solicits comment on appropriate criteria to prevent participation in the Program by newly formed insurance companies deemed by Treasury to be established for the purpose of evading the insurer deductible requirements of the Act and the Program. In this regard, Treasury's objectives are to encourage new sources of capital in the market for terrorism risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed under section 102(6)(C), is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Second, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C) of the Act. One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. Third, Treasury solicits comment on appropriate additional criteria that should be proposed pursuant to section 102(6)(C)

to ensure that federal payments made under the Program do not benefit entities with connections to terrorist organizations.

In addition to comments concerning possible additional criteria under section 102(6)(C), Treasury is soliciting comments on whether the definition of control contained in the interim final rule should be supplemented by proposing a rule to address situations in which a corporate insurance structure may contain multiple insurers that own, control or have the power to vote more than 25 percent of the voting shares of another insurer. See Section 102(3)(A) of the Act. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering and solicits comment on consolidating direct earned premiums for purposes of calculating the insurer deductible on a pro rata basis among the multiple controlling owners. For example, if Insurer Y owns 40 percent of the voting shares of Insurer Z and Insurer X owns 30 percent of the voting shares of Insurer Z, then a pro rata allocation of premium income and insured loss under the Program would be, respectively, 57 percent and 43 percent.

Treasury also is considering and solicits comment on a similar pro rata allocation method for control determinations under section 102(3)(C) of the Act in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. If proposed as considered, this pro rata approach would treat each insurer on a standalone basis for purposes of section 102(3)(C) of the Act if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Treasury solicits comments on various means to ensure the prompt and equitable distribution of the federal

payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

## II. Procedural Requirements

This proposed rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

It is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance

to mean commercial lines without any reference to the size or scope of the commercial entity. Although the Act affects small insurers, the proposed rule also gives insurers flexibility in calculating their direct earned premium for policies that have both commercial and personal exposures, and it provides a safe harbor to exclude policies that have incidental coverage for commercial purposes. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

## List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

## Authority and Issuance

For the reasons set forth above, the Department of the Treasury proposes to adopt as a final rule the interim final rule adding part 50 to 31 CFR subtitle A, as follows:

[The part title and text of proposed Part 50 is the same as the part title and text of Part 50 in the interim final rule published elsewhere in this separate part of this issue of the **Federal Register**.]

Dated: February 25, 2003.

**Wayne A. Abernathy,**

*Assistant Secretary of the Treasury.*

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