SUPPORTING STATEMENT
Terrorism Risk Insurance Program – Rebuttal of Control Submission

1. CIRCUMSTANCES NECESSITATING COLLECTION OF INFORMATION
Sections 103(a) and 104 of the Terrorism Risk Insurance Act of 2002 (Pub.L 107-297) (and unchanged by the Terrorism Risk Insurance Extension Act of 2005, Pub.L 109-144) authorize the Department of Treasury to administer and implement the temporary Terrorism Risk Insurance Program established by the Act. The definition of control in 102(3) of the Act provides for Treasury to determine whether an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. Among other things, if one insurer controls another insurer, then the insurers are deemed "affiliates" under the Program, and their direct earned premium must be consolidated for purposes of calculating the "insurer deductible" that in turn forms the basis for ascertaining federal payments made by Treasury under the Act as well as applicable surcharges.

Treasury established by interim final rule (68 FR 9804, February 28, 2003), certain rebuttable presumptions of controlling influence. Treasury thereafter published a notice of interim guidance (68 FR 15039, March 27, 2003) explaining the procedure an insurer must use in the event the insurer wished to rebut one or more of these presumptions of controlling influence. The procedure provides an insurer with the opportunity to rebut the presumption by making a written submission to Treasury that contains an explanation or relevant facts and circumstances and other relevant information in support of why the controlling influence presumption should not apply.

On July 11, 2003, Treasury issued a final rule (68 FR 41250) that, in response to comments on the interim final rule, modified the rebuttable presumptions of controlling influence slightly. Treasury replaced the notice of interim guidance by §50.8 in the final rule which provides comparable procedural guidance to an insurer that may wish to rebut a presumption of controlling influence.

2. USE OF DATA
Treasury will use the information submitted by the insurer to evaluate and then make a determination of whether the presumption of controlling influence by an insurer over another insurer has been rebutted for purposes of the Program. As of June 15, 2006, Treasury has received and made determinations on two submissions.

3. USE OF IMPROVED INFORMATION TECHNOLOGY
The rebuttal submission procedure does not require or restrict electronic submissions.

4. EFFORTS TO IDENTIFY DUPLICATION
Complete information necessary to make a determination that a controlling influence presumption has been rebutted is not available from any source other than the affected insurer.

5. METHODS TO MINIMIZE THE BURDEN ON SMALL BUSINESSES OR OTHER SMALL ENTITIES
Not applicable.

6. CONSEQUENCES OF LESS FREQUENT COLLECTION ON FEDERAL PROGRAMS OR POLICY ACTIVITIES
If the rebuttal procedure is not continued then there is no other means under the federal Terrorism Risk Insurance Program by which an insurer may rebut a regulatory presumption of controlling influence and no efficient and effective method by which Treasury (which does not generally regulate these insurers for any purpose other than the temporary Terrorism Risk Insurance Program) may obtain necessary

information may obtain necessary information to make a determination of whether there is a controlling influence by one insurer over another if disputed by the affected insurers.

7. SPECIAL CIRCUMSTANCES REQUIRING DATA COLLECTION TO BE INCONSISTENT WITH GUIDELINES IN 5 CFR 1320.5(d)(2)
Not applicable.

8. CONSULTATION WITH INDIVIDUALS OUTSIDE THE AGENCY ON AVAILABILITY OF DATA, FREQUENCY OF COLLECTION, CLARITY OF INSTRUCTIONS AND FORMS AND DATA ELEMENTS
Treasury has closely consulted with the National Association of Insurance Commissioners (NAIC) concerning the statutory definition of control and the regulatory rebuttable presumptions. As described in item number 1, the rebuttal procedure was initially issued as a notice of interim guidance in the Federal Register (68 FR 15039, March 27, 2003). It included language inviting comment on the paperwork burden (see copy attached). No comments were received. The rebuttal procedure was thereafter incorporated as §50.8 of a final rule. The preamble to the final rule also invited comment on the paperwork burden (see copy attached). No comments were received. The Notice separately requesting comment on this information collection (68 FR 51326, August 26, 2003) received no replies.

9. EXPLANATION OF DECISION TO PROVIDE ANY PAYMENT OR GIFT TO RESPONDENTS
Not applicable.

10. ASSURANCE OF CONFIDENTIALITY OF RESPONSES
No assurance of confidentiality has been provided, although applicable exemptions under the Freedom of Information Act could apply, e.g., to any confidential business or trade secret material submitted.

11. JUSTIFICATION OF SENSITIVE QUESTIONS
Not applicable.

12. ESTIMATED BURDEN OF INFORMATION COLLECTION
The number of insurers that may seek to rebut a presumption of control is not known but based on available information we estimate the number to be 10. We estimate that the hour burden for each submission will be 40 hours.

13. ESTIMATED TOTAL ANNUAL COST TO RESPONDENTS
The cost to submitters will depend on many factors, including the availability of information, size of the ownership structure of the insurer, whether counsel is used to prepare the submission, etc.

14. ESTIMATED COST TO THE FEDERAL GOVERNMENT
Not applicable.

15. REASON FOR CHANGE IN BURDEN
Not applicable.

16. PLANS FOR TABULATION, STATISTICAL ANALYSIS AND PUBLICATION
Not applicable.

17. REASONS WHY DISPLAYING THE OMB EXPIRATION DATE IS INAPPROPRIATE
Not applicable.

18. EXCEPTIONS TO CERTIFICATION REQUIREMENT OF OMB FORM 83-I

Not applicable.

[Federal Register: February 28, 2003 (Volume 68, Number 40)]
[Rules and Regulations]
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Part V

Department of the Treasury

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31 CFR Part 50

Departmental Offices; **Terrorism Risk Insurance** Program; Interim Final Rule and Proposed Rule

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DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505-AA96

Departmental Offices; **Terrorism Risk Insurance** Program

AGENCY: Departmental Offices, Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this

interim final rule as part of its implementation of Title I of the **Terrorism Risk Insurance** Act of 2002 (Act). 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 interim final rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, this interim final rule incorporates interim guidance previously issued by Treasury concerning these definitions. However, the preamble indicates those areas in which Treasury has modified the interim guidance. This interim final rule is the first of a series of regulations Treasury will issue to implement the Program.

DATES: This interim rule is effective February 28, 2003. Written comments on this interim final rule may be submitted to the Treasury Department 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: triacomments@do.treas.gov. Please include your

name, affiliation, address, e-mail address and telephone number in your comment. All comments should be captioned with ``February 28, 2003 TRIA Comments.'' 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. Background

A. **Terrorism Risk Insurance** Act of 2002

On November 26, 2002, President Bush signed into law the **Terrorism Risk Insurance** Act of 2002 (Public Law 107-297, 116 Stat. 2322). The Act was effective immediately. 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** as defined in the Act and certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the **Terrorism Risk Insurance** Program, including the issuance of regulations and procedures. The Program will sunset on December 31, 2005.

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 to allow for a transition period for the private markets to stabilize and build

capacity while preserving State **insurance** regulation and consumer protections.

The amount of Federal payment for an insured loss resulting from an act of **terrorism** is to be determined based upon the **insurance** company deductibles and excess loss sharing with the Federal Government, as specified by the Act. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of ``insurer''(well over 2,000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must ``make available'' **terrorism risk insurance** in their commercial property and casualty **insurance** policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of **terrorism**. The Act permits Treasury to extend the ``make available'' requirement into Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal government's involvement prior to sunset of the Program. An insurer's deductible is based on ``direct earned premiums'' over a statutory Transition Period and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of $100 billion. The Act prohibits duplicative payments for insured losses that have been covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of **terrorism**. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. This section also provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

B. Previously Issued Interim Guidance

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time sensitive requirements of the Act prior to the issuance of these and future regulations, Treasury issued interim guidance in three separate notices. Treasury publicly released these interim guidance notices on its Program Web site, http://www.treasury.gov/trip, and published each notice in the

site, http://www.treasury.gov/trip, and published each notice in the

Federal Register.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002

and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer ``make

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available'' **terrorism risk insurance**. The disclosure guidance in Interim Guidance I references certain model forms of the National Association of **Insurance** Commissioners (NAIC) and provides safe harbor for those insurers that make use of such forms prior to the issuance of regulations, but Interim Guidance I stated that these forms are not the exclusive means by which insurers could comply with the disclosure conditions prior to the issuance of regulations. Interim Guidance I also provided guidance concerning the ``direct earned premium'' on lines of property and casualty **insurance** to enable insurers to calculate their ``insurer deductible'' and enable insurers to price and disclose their premiums for **terrorism risk insurance** to policyholders within statutory time periods.

On December 18, 2002, Treasury issued a second notice of interim guidance. This interim guidance was published at 67 FR 78864 on December 26, 2002 (Interim Guidance II). Interim Guidance II further addressed the statutory categories of ``insurers'' that are required to participate in the Program, including their ``affiliates''; provided clarification on the scope of ``insured loss'' covered by the Program and provided additional guidance to enable eligible surplus line carriers listed on the Quarterly Listing of Alien Insurers of the NAIC or federally approved insurers to calculate their insurer deductible for purposes of the Program.

On January 22, 2003, Treasury issued a third notice of interim guidance, published at 68 FR 4544 on January 29, 2003 (Interim Guidance III). Interim Guidance III further clarified certain disclosure and certification questions, issues for non-U.S. insurers, and the scope of the term ``insured loss'' under the Act.

In issuing each notice of Interim Guidance, Treasury stated that the Interim Guidance may be relied upon by insurers until superseded by regulations or a subsequent notice. Treasury provided safe harbors for actions by those insurers taken in accordance with, and in reliance on, the interim guidance for the time period prior to the issuance of regulations. Treasury now is issuing an interim final rule with request for comment. The interim final rule addresses certain general Program provisions and Program definitions. Treasury is also issuing a companion proposed rule with request for comment.

II. Analysis of the Interim Final Rule

The interim final rule establishes a new Part 50 in Title 31 of the Code of Federal Regulations, 31 CFR Part 50. Part 50 eventually will include other regulations deemed necessary by Treasury to implement the Program. Subpart A of new Part 50 contains certain general provisions and definitions of Program terms.

Some of the definitions are taken virtually verbatim from the Act because they do not need further clarification and are included in the interim final regulations primarily for ease of reference. In addition, the interim final rule generally incorporates the interim guidance provided previously by Treasury as it pertains to Program terms, for example, the terms ``insurer,'' ``affiliate'', ``property and casualty **insurance**'' and ``direct earned premium.'' In several areas, the

interim final regulation makes clarifying modifications to, or supplements, the interim guidance. For example, the interim final rule clarifies and emphasizes that the Program covers only commercial lines of property and casualty **insurance**, subject to the inclusions and exclusions of certain lines of **insurance** as set forth in the definition of property and casualty **insurance** in section 102(12) of the Act. The Program does not cover personal lines of property and casualty **insurance**, even if the latter are reported by an insurer on the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14).

In implementing the Program, Treasury has been guided by several goals. First, we strive to implement the Act in a transparent and effective manner that, for example, treats comparably those insurers required to participate in the Program and that provides necessary information to policyholders in a useful and efficient manner. Second, Treasury seeks to rely as much as possible on the State **insurance** regulatory structure. In that regard, Treasury is closely coordinating with the NAIC in implementing definitions and other aspects of the Program. Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources and mechanisms for **terrorism risk insurance** coverage when the Program expires.

Key Program definitions contained in the interim final regulation are analyzed below.

A. What is an ``Act of **Terrorism**'' Under the Program?

The Program definition of ``act of **terrorism**'' in the interim final rule is the same definition that is contained in section 102(1) of the Act. Section 106(a)(2) of the Act provides that the Act's definition is the exclusive definition of the term ``act of **terrorism**'' for purposes of compensation for insured losses under the Act. The Act's definition requires a certification by the Treasury Secretary, in concurrence with the Secretary of State and the Attorney General of the United States, that an act is an act of **terrorism** within the statutory parameters. These parameters include an act that is violent or dangerous to human life, property or infrastructure; that has resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or if on the premises of a U.S. mission; and that has been committed by individual(s) on behalf of any foreign person or foreign interest, as part of an effort to coerce the U.S. civilian population or to influence the policy or affect the conduct of the U.S. government by coercion.

Thus, for example, acts of domestic civil disturbance would not be covered by the Act's definition of ``act of **terrorism**'' or therefore, by the Program. As in the Act, the interim final rule provides that the Secretary's determination or certification with regard to an act is final and is not subject to judicial review. An act of **terrorism** must meet a $5,000,000 de minimis aggregate loss requirement before it may be certified. The Act also provides that an act is not certifiable if committed as part of a course of war declared by Congress, except with respect to workers compensation coverage.

B. What Entities Must Participate in the Program (``Affiliate'', ``Control'', ``Insurer'')?

1. Mandatory Participation of Insurers

The general provisions of the interim final rule incorporate the Act's requirement in section 103(a)(3) that each entity meeting the definition of ``insurer'' under the Act must participate in the Program.

2. ``Insurer''

The interim final rule incorporates the statutory definition of ``insurer'' and generally incorporates the guidance set forth in Interim Guidance II concerning

the categories of insurer and the definition of affiliate. To participate in the Program, an entity, including an affiliate of an insurer, must itself meet all of the requirements of section 102(6)(A), (B) and, as the Treasury may prescribe, (C). This means that to be an insurer, an entity must (1) fall within one of the categories in section 102(6)(A) described below, and (2) must receive direct earned premiums as required by section 102(6)(B) and (3) must meet any additional criteria established by Treasury pursuant to section 102(6)(C).

a. Must Fall Within a Category of Insurers in Section 102(6)(A)

First, an insurer must fall within at least one of the following several categories set forth in section 102(6)(A):

(i) Licensed or admitted to engage in the business of providing primary or excess **insurance** in any State (``State'' includes the District of Columbia and territories of the United States);

(ii) Not so licensed or admitted, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the National Association of **Insurance** Commissioners;

(iii) Approved for the purpose of offering property and casualty **insurance** by a Federal agency in connection with maritime, energy or aviation activity; or

(iv) A State residual market **insurance** entity or State workers' compensation fund.

Consistent with Interim Guidance II, the interim final rule provides that an entity that falls within two categories will be considered by Treasury to fall within the first category it meets under section 102(6)(A)(i)-(v). Therefore, if an entity is a federally approved insurer under section 102(6)(A)(iii) and is licensed or admitted in any State, it will be treated under the Program as a State licensed or admitted insurer under section 102(6)(A)(i).

In each of the categories of insurer in section 102(6)(A)(i)-(iv), the insurer has a pre-existing State or NAIC regulatory framework, or has a relationship with a Federal or State program. In developing this interim final rule, Treasury considers such a nexus between an insurer and a Federal or State program or regulatory authority to be extremely important to the effective and efficient administration of the Program. A pre-existing nexus between an insurer and a regulatory structure, for example, assists Treasury in ensuring the financial integrity of participating entities, in obtaining necessary data to implement and evaluate the Program and in carrying out Treasury's surcharge and recoupment, audit and enforcement responsibilities under the Act. Treasury's emphasis on such a nexus is also in accord with the temporary nature of the Program and other aspects of the Program's statutory structure.

``State Licensed or Admitted''

Insurers under clause (i) of section 102(6)(A) include all entities that are licensed or admitted by a State's **insurance** regulatory authority. This group of insurers includes captive insurers, **risk** retention groups, and farm and county mutuals, if such entities are State licensed or admitted. The Program treats all State licensed or approved insurers consistently in accord with the plain language of section 102(6)(A)(i). This treatment also furthers other statutory objectives such as ensuring that policyholders have widespread access to the **terrorism risk insurance** benefits of Program, and spreading potential costs of the Program associated with any federal loss-sharing payments. (For example, see the cost spreading provisions in connection with recoupment as required by section 103(e)(7) and in connection with surcharges as required by section 103(e)(8) to be applied to all commercial property and casualty policyholders).

Other Categories of Insurers

The NAIC has established criteria for approval of eligible surplus line carriers for listing on the NAIC's Quarterly Listing of Alien Insurers. Federally approved insurers under section 102(6)(A)(iii) are addressed in detail below. Treasury intends to issue additional regulations to apply the provisions of the Act to insurers in clause (iv) of State residual market **insurance** entities and State workers' compensation funds pursuant to section 103(d).

As described above, all State licensed or admitted captive insurers are insurers within the Program under section 102(6)(A)(i). Treasury may, in consultation with the NAIC or the appropriate State regulatory authority, apply the provisions of the Act to ``other classes or types of captive insurers and other self **insurance** arrangements'' pursuant to section 103(f) of the Act, but only if such an application is determined before the occurrence of an act of **terrorism** and all of the provisions of the Act are applied comparably to such entities. Treasury has engaged in consultations, but has not yet made a decision regarding the participation in the Program of captives and other self **insurance** arrangements that do not fall into other categories in clauses (i)-(iv).

b. Must Receive Direct Earned Premiums As Required by Section 102(6)(B)

The second criteria an entity must meet to be an insurer for purposes of the Program is prescribed by section 102(6)(B). In addition to falling within a category in section 102(6)(A), to be an ``insurer'' under the Act, an entity must receive ``direct earned premiums'' (as defined) on any type of commercial property and casualty **insurance** (as defined). The key aspect of this requirement in the statutory definition of insurer is the Act's specification of a direct measure of premium income as opposed, for example, to a net measure of premium income which accounts for reinsurance. Although the legislative history and design of the Act envision reinsurance arrangements as an important component of capacity within the **insurance** market, the Act excludes reinsurance from the Program. (Section 103(g) of the Act provides that the Act does not limit or prevent ``insurers'' from obtaining reinsurance coverage for ``insurer deductibles'' or ``insured losses'' retained by insurers.) Therefore, consistent with the Act and Treasury's Interim Guidance II, the interim final rule provides that, if an entity does not receive direct earned premiums as required by section 102(6)(B), and subject to statutory exceptions, then the entity is not an ``insurer'' under the Act. In that regard, Section 102(6)(B)

excepts State residual market **insurance** entities from the direct earned premium requirement.

c. Must Meet Additional Criteria Prescribed by Treasury Under Section 102(6)(C).

In addition to the requirements of section 102(6)(A) and (B) described above, section 102(6)(C) of the Act requires that an insurer also meet ``any other criteria that the Secretary of the Treasury may reasonably prescribe.'' The interim final rule does not prescribe additional criteria under section 106(C). Published elsewhere in this separate part of the Federal Register is a notice of proposed rulemaking in which Treasury solicits public comment on whether the Secretary should prescribe other criteria for certain insurers pursuant to the authority provided by section 102(6)(C) and, if so, what criteria Treasury should prescribe. In this regard, in the notice of proposed rulemaking 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. As stated in the notice of proposed rulemaking, Treasury's objectives are to encourage new sources of capital in the market for **terrorism**

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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, 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.

Also in the notice of proposed rulemaking published elsewhere in this separate part of the Federal Register, 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). 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. In addition, in the notice of proposed rulemaking published elsewhere in this separate part of the Federal Register, Treasury solicits comment on criteria that Treasury should propose and prescribe under section 102(6)(C) to ensure that payments under the Program do not benefit entities with connections to terrorist organizations.

d. ``Federally Approved'' Insurer.

If an entity does not fall within section 102(6)(A)(i) or (ii), but is approved or accepted by a Federal agency to offer property and casualty **insurance** in connection with maritime, energy or aviation activities; receives direct earned premiums for any type of commercial property and casualty **insurance** as required by 102(6)(B), and, if prescribed, meets any criteria established by Treasury under 102(6)(C), then, such an entity is considered by Treasury to be a federally approved ``insurer'' under section 102(6)(A)(iii).

As reflected in Interim Guidance II, this interim final rule

provides that the scope of **insurance** coverage (insured losses) under the Program for federally approved insurers under section 102(6)(A)(iii) is only to the extent of federal approval of the commercial property and casualty **insurance** coverage approved by the Federal Agency in connection with maritime, energy or aviation activity. Insured losses under other **insurance** coverage that may be offered by a federally approved insurer under section 102(6)(A)(iii) is not covered by the Program. This treatment of federally approved insurers is in accord with the statutory language of the Act in section 102(6)(A)(iii) (``approved for the purpose of offering property and casualty **insurance** by a Federal agency in connection with maritime, energy or aviation activity''). This treatment is also in accord with Treasury's consideration of a pre-existing nexus (for example, the nexus of State-licensing or NAIC approval for listing on the Quarterly Listing of Alien Insurers) as very important to the effective and efficient administration of the Program. This nexus is considered by Treasury to be an important aid in ensuring financial integrity of participants in the Program, in obtaining data, and in connection with recoupment, audit and enforcement responsibilities, among others. In addition, this treatment is consistent with the temporary nature and other statutory structure of the Program. Treasury recognizes that it is possible to interpret section 102(6)(A)(iii) more broadly, but for reasons stated above has determined that the narrower reading is not only in accord with the statutory language but serves other important purposes in the administration of the Program.

Examples of federally approved insurers under section 102(6)(A)(iii) are those insurers that do not fall within section 102(6)(A)(i) or (ii), and are approved or accepted by a Federal agency under the following federal programs and statutes:

[sbull] Approval of Underwriters for Marine Hull **Insurance** (Maritime Administration, U.S. Department of Transportation).

[sbull] Aircraft Accident Liability **Insurance** (U.S. Department of Transportation).

[sbull] Oil Spill Financial Responsibility for Offshore Facilities (Minerals Management Service, U.S. Department of the Interior).

[sbull] Oil Spill Financial Responsibility for Vessels (United States Coast Guard, U.S. Department of Transportation).

[sbull] Longshoremen's and Harbor Workers' Compensation Act (Employment Standards Administration, U.S. Department of Labor).

[sbull] Price Anderson Act (Nuclear Regulatory Commission, U.S. Department of Energy).

The above list of Federal **insurance** programs contains an addition to the list contained in Interim Guidance II through the express inclusion of insurers approved or accepted under the Price Anderson Act. This list is provided as a starting reference point and is not exclusive. Any entity that is approved or accepted by a U.S. agency to offer commercial property and casualty **insurance** in connection with maritime, energy or aviation activities by a program that is not listed above is particularly encouraged to advise the designated Treasury contacts provided by this rule with the name of the program and the name of the Federal agency that approved or accepted them.

Treasury is not prescribing additional criteria under section 102(6)(C) in the interim final rule for federally approved insurers, but solicits comments elsewhere in this separate part of the Federal Register on whether and what additional criteria should be prescribed for federally approved insurer.

3. ``Affiliates''

The definition of ``insurer'' in section 102(6) includes ``any

affiliate thereof.'' Section 102(2) of the Act defines ``affiliate'' to mean ``with respect to any insurer, any entity that controls, is controlled by or is under common control with the insurer'' (emphasis supplied). Any affiliate that does not meet the definition of insurer, for example, it does not fall into any of the categories in section 102(6)(A) or does not receive direct earned premiums for commercial property and casualty **insurance** as required by section 102(6)(B), is not an ``insurer'' for purposes of the Program. Consistent with Interim Guidance II, and the definition of ``control'' discussed below, Treasury will treat the parent company, and all affiliates that meet the requirements of ``insurer'' in section 102(6)(A), (B) and (C), collectively as one ``insurer'' for purposes of calculating the direct earned premiums on which the insurer deductible is based under the Program. This consolidated treatment is also in accord with the Conference Report to accompany the Act, which states, in the explanation of section 102 of the Act, that ``the terms `affiliate' and `control' are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums.'' H.R. Conf. Rep. No. 107-779 (2002).

For example, if an **insurance** company is licensed or admitted to engage in the

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business of providing primary or excess **insurance** in a State and receives direct earned premiums as required in section 102(6)(B), and three out of four of its affiliate **insurance** companies also are State licensed and meet the requirements of section 102(6)(B) and (C), then the parent company and the three affiliates that meet the definition of ``insurer'' are, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and calculating insurer deductibles under the Program. The affiliate that does not fall within one of the categories in section 102(6)(A) or fails to meet all the requirements to be an ``insurer'' under section 102(6) is not included in the Program.

As discussed previously in Interim Guidance II, if an entity is ``under common control with the insurer,'' and that entity meets the requirements to be an ``insurer'' in section 102(6)(A)-(C), Treasury will consider that entity collectively with the other insurer (its affiliate) as one ``insurer'' for the Program purposes of consolidating direct earned premiums and calculating the insurer deductible. For example, assume that two **insurance** companies are licensed to engage in the business of providing primary or excess **insurance** in any State (either in one State or in separate States) and both receive direct earned premiums as required by section 102(6)(B). Each company, would meet the definition of ``insurer.'' Assume additionally that the common parent of the two companies does not fall into any of the categories in section 102(6)(A). Treasury will consider the two affiliated companies to be, collectively, one insurer for purposes of calculating and consolidating direct earned premiums and their insurer deductible under the Program, but their parent company is not an insurer and not included in the Program.

4. ``Control''

Related to the definition of insurer and affiliate is the definition of ``control'' in section 102(3)(A)-(C) of the Act. The definition and determination of ``control'' for purposes of the Program is used by Treasury to calculate the insurer deductible on a consolidated basis for an insurer ``including any affiliate

thereof''(see discussion of affiliate above). Under the Act, an entity is in control of another entity if the statutory definition is met under section 102(3)(A) or (B), or if Treasury makes a determination under (C) that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity. Each category of control for purposes of the Program is described below with examples.

a. ``Owns, Controls or has the Power to Vote'' 25 Percent of Voting Securities.

Section 102(3)(A) provides that an entity has ``control'' over another if the entity directly or indirectly or acting through 1 or more other persons owns, controls or has power to vote, 25 percent or more of any class of voting securities of the other entity. For example, if Insurer X owns, or has the power to vote, 25 percent or more of any class of voting securities of Insurer Y, then Insurer X is in control of Insurer Y under section 102(3)(A). This control relationship means, among other things, that Treasury will consolidate the direct earned premiums of these two insurers under Insurer X for purposes of calculating the insurer deductible and evaluating a claim for federal payment.

Published elsewhere in this separate part of the Federal Register is a notice of proposed rulemaking in which Treasury solicits 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. Based on available information, such control arrangements exist but they do not appear to be common. In particular, Treasury is considering 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.

b. Controls Election of Majority of Directors or Trustees.

Pursuant to section 102(3)(B), an entity also is in control over another entity for purposes of the Program if the entity controls in any manner the election of a majority of the directors or trustees of the other entity. For example, even if Insurer A does not own or have the power to vote 25 percent or more of any class of voting securities of Insurer B, if Insurer A controls in any manner the election of a majority of the directors or trustees of Insurer B, then Insurer A ``controls'' Insurer B under the Act. This means that, for purposes of the Program, Treasury will consolidate the direct earned premiums of these two insurers under Insurer A in calculating the insurer deductible and evaluating a claim for federal payment.

c. Control Determination by Treasury under Section 102(3)(C).

If no control relationship exists on the basis of either section 102(3)(A) or (B), Treasury has authority, under section 102(3)(C), to determine, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of another insurer. To provide further guidance for purposes of a control determination under this subsection (C), the interim final rule establishes several rebuttable presumptions. The first rebuttal presumption under section 102(3)(C) is that an entity is in control of another entity for purposes of the Program (including consolidation of direct earned premiums in calculating the insurer

deductible) if a State has determined that a control relationship exists between the two entities. If a State has made such a control determination with regard to two insurers, and the affected insurers wish to rebut the presumption established in this interim final rule, then the insurers may request an informal hearing (e.g. exchange of documents) in which they will be given an opportunity by Treasury to present and support their position that no control relationship exists, prior to a final determination by Treasury.

The second rebuttable presumption Treasury is establishing is that an insurer exercises directly or indirectly a controlling influence over the management or policies of another insurer under section 102(3)(C) if 25 percent or more of capital of a stock insurer, policyholder surplus of a mutual insurer, or corporate capital of other entities qualifying as insurers is provided by another insurer, even in the absence of voting shares or of control of the election of a majority of the directors or trustees of the other insurer. The third rebuttable presumption is that an insurer exercises directly or indirectly a controlling influence over the management or policies of a syndicate insurer if, at any time during the Program Year, the insurer supplies 25 percent or more of the underwriting capacity for that year to the other insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters.

If the affected insurers wish to rebut the presumptions described above and established by this interim final rule, then such insurers may request a hearing in which they will be given an opportunity to rebut the presumption of control by presenting and supporting

their position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentation.

Published elsewhere in this separate part of the Federal Register is a notice of proposed rulemaking in which Treasury solicits comment on a pro rata allocation method for control determinations under section 102(3)(C) of the Act, similar to the pro rata method under consideration for controlling insurers under section 102(3)(A), 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. The pro rata approach under consideration by Treasury would treat each insurer on a standalone basis for Program purposes such as calculation of direct earned premiums and the insurer deductible 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.

At a later date, Treasury will be issuing claims procedures. 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. Elsewhere in this separate part of the Federal Register, Treasury solicits comments on various means to ensure the prompt 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.

C. What is the Scope of **Insurance** Coverage Under the Program? (``Insured Loss'', ``Property and Casualty **Insurance**'', ``Direct Earned Premium'' and Insurer Deductible'')

1. ``Insured Loss''

The definition of ``insured loss'' in the interim final rule incorporates the statutory definition in section 102(5) supplemented by the guidance concerning scope of the term ``insured loss'' that is contained in Interim Guidance II and Interim Guidance III. Section 102(5) of the Act defines insured loss to mean any loss resulting from a certified ``act of **terrorism**'' covered by primary or excess ``property and casualty **insurance**,'' that is issued by an ``insurer,'' if such loss:

[sbull] ``Occurs within the United States,'' or

[sbull] Occurs to an ``air carrier''; a U.S. 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,'' or

[sbull] Occurs ``at the premises of any United States mission.''

In general, if the property and casualty **insurance** coverage is provided within the geographic and other statutory parameters of the definition of ``insured loss'' in the Act as described above, and is provided by an ``insurer'' as defined in section 102(6) of the Act (whether or not the insurer is non-U.S. based or owned), then such losses will be covered by the Program, subject to the conditions for payment and other requirements of the Act. However, if **insurance** coverage is provided by an entity that is not an ``insurer'' under the Act, then, even if a loss occurs within the United States, or otherwise meets the definitional parameters of ``insured loss,'' e.g. occurs to an air carrier or vessel or mission as defined in the Act, the loss would not be covered by the Program. In addition, if **insurance** is provided by a U.S. insurer, but the loss does not fall within the definition of ``insured loss,'' for example, it occurs on foreign soil and not to a U.S. mission or covered air carrier or vessel, then the loss would not be covered by the Program. Section 102(5)(A) provides that ``insured losses'' means any loss resulting from a certified act of **terrorism** and covered by primary or excess property and casualty **insurance** issued by an insurer if such loss occurs within the United States.

As described in Interim Guidance III, insured losses under section 102(5)(B) are only those losses that are incurred by covered air carriers or vessels, if the insured loss occurs beyond the geographic boundaries of the United States as described in Section 102(5)(A). Losses that are incurred by covered air carriers or vessels would include losses covered by **insurance** coverage provided to those entities (for example, property **insurance** coverage and liability coverage). Not included under section 102(5)(B) are losses that are not incurred by covered air carriers or vessels, such as losses covered by third party **insurance** contracts that are separate from the **insurance** coverage provided to covered air carriers or vessels.

2. ``Property and Casualty **Insurance**''

Section 102(12) of the Act defines ``property and casualty **insurance**'' to mean commercial lines of property and casualty **insurance**. The statutory definition expressly includes ``excess **insurance**, workers compensation **insurance** and surety **insurance**.'' In

addition, the Act specifically excludes (i) federal crop **insurance** issued or reinsured under the Federal Crop **Insurance** Act or any other type of crop or livestock **insurance** that is privately issued or reinsured; (ii) private mortgage **insurance** as defined in the Homeowners Protection Act of 1998 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; and (vii) reinsurance or retrocessional reinsurance.

Insurance is generally regulated by State law in the United States. There is no uniform or consistent definition of ``commercial property and casualty **insurance**'' among the States. In some States, a line of **insurance** may be considered commercial and in other States the same line of **insurance** is considered personal. However, as Program administrator, Treasury must designate types or lines of commercial property and casualty **insurance** on which direct earned premiums and insurer deductibles are to be calculated and for which federal payments will be made for ``insured losses'' under the Program. Direct earned premiums received by insurers for commercial property and casualty **insurance** under the Program are the basis for the Program's statutory reinsurance structure, for other terms and for federal payments. In developing a definition of property and casualty **insurance** for purposes of administrating and implementing the Program, Treasury considered the statutory definition, the Program structure, and effective administration of the Program. In this regard, Treasury also consulted with the NAIC and others regarding State law and premium reports filed with the NAIC.

The interim final rule defines the scope of commercial property and casualty **insurance** for purposes of the Program to include commercial property and casualty **insurance**, including those lines of **insurance** expressly included in section 102(12) of the Act and excluding

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those lines of **insurance** expressly excluded by the same statutory definition. Treasury's interim final rule incorporates the suggested guidance in Interim Guidance I that commercial lines within the following lines of **insurance** coverage that are reported on the NAIC Annual Statement of the Exhibit of Premiums and Losses--commonly known as Statutory Page 14 are included in the Program: Line 1--Fire; Line 2.1--Allied Lines; Line 3--Farmowners Multiple Peril; 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 19.3--Commercial Auto No-Fault (personal injury protection); Line 19.4--Other Commercial Auto Liability; Line 21.2--Commercial Auto Physical Damage; Line 22--Aircraft (all perils); Line 24--Surety; Line 26--Burglary and Theft; and Line 27--Boiler and Machinery.

The interim final rule also clarifies that premium information on such lines of Statutory Page 14 should only be included in calculating an insurer's direct earned premium and insurer deductible to the extent that coverage is provided for commercial property and casualty exposures. In other words, personal **insurance** that is reported on the specified covered lines of Statutory Page 14 should be excluded from an insurer's calculation of its direct earned premium and insurer deductible. In making that determination for purposes of the Program,

insurers may consider **insurance** coverage primarily designed to cover personal, family or household purposes to be personal **insurance** and, therefore, not covered by the Program. Personal **insurance** policies that include incidental coverage for commercial purposes would be considered to be primarily personal policies. For purposes of the Program, as reflected in this interim final rule, Treasury considers incidental commercial coverage to exist where less than 25 percent of total premium is attributable to commercial coverage.

In contrast, commercial property and casualty **insurance** generally is designed to cover the commercial interests of business, civic, not-for-profit or governmental entities, or other similar individuals, organizations, or professional practices. In cases where an **insurance** policy covers both commercial and personal exposures, and is not primarily a personal policy, insurers should allocate the proportion of **risk** between commercial and personal components in determining what portion of the policy falls under the Program. In suggesting this allocation, Treasury is not establishing a new reporting requirement at this time, but is suggesting a method by which insurers may calculate their deductibles and for Treasury to verify any claims under the Program.

Insurers that do not report premiums to the NAIC on Statutory Page 14 may use the guidance provided above as an analogy or reference point in determining whether and what lines of their commercial property and casualty **insurance** are included in the Program and in calculating their direct earned premium and insurer deductible. In this regard, as discussed earlier, the **insurance** coverage of federally approved insurers within the Program covers only those lines for which the insurer has received federal approval.

3. ``Direct Earned Premium''

Section 102(4) of the Act defines direct earned premium as a ``direct earned premium for property and casualty **insurance** issued by any insurer for **insurance** against'' insured losses as defined in section 102(5). As discussed below, the term ``insurer deductible'' is based on direct earned premiums received by insurers during specified time periods. Interim Guidance I and II, provided guidance to concerning the term ``direct earned premium'' in relation to the terms ``insurer deductible'', ``insured loss'' and ``property and casualty **insurance**''. The interim final rule reflects this previous guidance but contains further clarifications and supplementary guidance. For insurers that report premiums to the NAIC on Statutory Page 14, ``direct earned premium'' is the information reported on column 2 for the lines of commercial property and casualty **insurance** referenced above, with the specified adjustments to remove personal **insurance** coverage. This interpretation of direct earned premium information is consistent with scope of ``insured loss'' as defined in the Act and will be used by Treasury to calculate the insurer deductible for these insurers.

Other insurers that are required to participate in the Program but that do not report on Statutory Page 14 may use the discussion above with reference to Statutory Page 14 as an analogy in developing a comparable means by which they may calculate their direct earned premiums. Treasury will use similar premium information (compiled by these entities or their State regulators) to calculate an insurer's deductible. For county or town mutual insurers that do not report to the NAIC, for purposes of calculating direct earned premium, data that is reported to their State regulator or maintained by the insurer should be adjusted to: (1) Reflect an appropriate breakdown between commercial and personal risks as outlined above; and (2) if necessary,

re-stated to reflect the accrual method of determining direct earned premium versus direct premium. In addition, such entities should also consider other types of payments that compensate an insurer for the **risk** of loss (for example, assessments, contributions, or other similar concepts) as being equivalent to premium income for purposes of the Program.

Eligible surplus line carrier insurers may determine the scope of **insurance** coverage and their insurer deductible under the Program for policies that are in-force as of the date of enactment or that are entered into prior to January 1, 2003, with reference to the geographic scope in the definition of ``insured loss,'' and with reference to the covered commercial property and casualty lines of **insurance** described above. For policies issued by eligible surplus line carriers after January 1, 2003, as stated in Interim Guidance II, the premium for **insurance** coverage within the geographic scope of ``insured loss'' must be priced separately by eligible surplus line carrier insurers.

In calculating the appropriate measure of direct earned premium to determine the deductible for Program Year 1, eligible surplus line carriers may use and rely on the same allocation methodologies contained within the NAIC's ``Allocation of Surplus Lines and Independently Procured **Insurance** Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage within the geographic scope of ``insured loss'' and all other coverage to estimate the appropriate percentage of premium income for such policies that applies to such risks.

Similarly, consistent with the scope of **insurance** coverage under the Program and other limitations that apply to federally approved insurers, such insurers should a use methodology similar to that used by eligible surplus line carriers in calculating the appropriate measure of their direct earned premium.

4. ``Insurer Deductible''

The Act defines an ``Insurer Deductible'' in Section 102(7) for the various ``Program Years'' and other periods covered by the Program. For example, Section 102(7)(B) defines the insurer deductible for Program Year 1 (January 1, 2003 through December 31, 2003) as ``the value of an insurer's direct

earned premiums over the calendar year immediately preceding Program Year 1 multiplied by 7 percent''. A State licensed or admitted insurer may estimate its insurer deductible by multiplying the applicable percentage (listed in the Act for each of the Program Years) by the direct earned premium information for commercial lines of property and casualty **insurance** reported on Statutory Page 14 with the appropriate adjustments as described above. Other entities should follow a similar methodology based the definitions of ``insured loss,'' ``property and casualty **insurance**,'' and ``direct earned premium.''

Section 102(7)(E) provides Treasury with authority to determine the appropriate methodology for measuring the direct earned premium if an insurer has not had a full year of operations during the calendar year immediately preceding the Program Year.

Because new companies have only had limited business operations, it is likely that their premium income will be somewhat volatile. Such volatility could persist throughout the life of the three-year Program. Thus, to treat these newly formed insurers in a manner that is consistent with other insurers under the Program and to prevent newly formed insurers from having the unfair advantage of lower relative

deductibles, this interim final rule specifies that the deductible measure for new companies formed after the date of enactment (November 26) will be based on contemporaneous data for direct earned premium that corresponds to the current Program Year. If a newly formed insurer does not have a full year of operations within a particular Program year, this interim final rule provides that an insurer's direct earned premium for Program year will be annualized to determine an insurer's deductible.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of **terrorism**. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of **terrorism risk** exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for federal payment contained in the Act applied immediately to those entities that come within the Act's definition of ``insurer.'' In the near term, Treasury will be issuing additional regulations to implement the Program. This interim final regulation provides critical information concerning the definitions of Program terms that lays the groundwork for Treasury's implementation of the Program. No one can predict if, or when, an act of **terrorism** may occur. There is an urgent need for Treasury, as Program administrator, to lay the groundwork for Program implementation through interim final regulations to provide clarity and certainty concerning which entities are required to participate in the Program; the scope and conditions of Program coverage; and other implementation issues that immediately affect insurers, their policyholders, State regulators and other interested parties. This includes the need to supplement, or modify as necessary, previously issued interim guidance.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form during the pendency of an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule.

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

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. 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 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, 31 CFR Subtitle A is amended by

adding Part 50 to read as follows:

PART 50--**TERRORISM RISK INSURANCE** PROGRAM

Subpart A--General Provisions

Sec.
50.1 Authority, purpose and scope.
50.4 Mandatory participation in Program.
50.5 Definitions.
50.6 Rules of construction for dates.
50.7 Special rules for Interim Guidance safe harbors.

Subpart B--Disclosures as Conditions for Federal Payment [Reserved]

Subpart C--Mandatory Availability [Reserved]

Subpart D--State Residual Market **Insurance** Entities; Workers' Compensation Funds [Reserved]

Subpart E--Self-**Insurance** Arrangements; Captives [Reserved]

Subpart F--Claims Procedures [Reserved]

Subpart G--Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H--Recoupment and Surcharge Procedures [Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107-297, 116 Stat. 2322 (15 U.S.C 6701 note).

Subpart A--General Provisions

Sec. 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, Pub. L. 107-297, 116 Stat. 2322.

(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.

Sec. 50.4 Mandatory participation in Program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

Sec. 50.5 Definitions.

For purposes of this Part:

(a) Act means the **Terrorism Risk Insurance** Act of 2002.

(b) Act of **terrorism**. (1) In general. The term act of **terrorism**

means any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States:

(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;

(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 acting on

behalf of any foreign person or foreign interest, 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 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) For purposes of paragraph (c)(1) of this section, an insurer has control over another insurer for purposes of the Program if:

(i) An 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;

(ii) An insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(iii) 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 control as defined in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

(3) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, the following rebuttable presumptions will apply:

(i) If a State has determined that an insurer controls another insurer, there is a rebuttable presumption that the insurer that is determined by the State to control another insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section; and

(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), 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)(iii) of this section.

(iii) If an insurer, at anytime during a Program Year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(iii) of this section.

(4) An insurer deemed to be in a control relationship pursuant to paragraph (c)(2)(iii) of this section as a result of the rebuttable presumption in paragraph (c)(3)(i), (ii) or (iii) of this section may request a hearing in which the insurer will be given an opportunity to rebut the presumption of control by presenting and supporting its position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentations.

(d) Direct earned premium means the direct earned premium(s) received by an insurer for commercial property and casualty **insurance** issued by the insurer against insured losses under the Program.

(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 commercial property and casualty **insurance** coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty **insurance**).

(i) Premium information as reported to the NAIC is included in the calculation of direct earned premiums for purposes of the Program only for commercial property and casualty coverage issued by the insurer.

(ii) Premiums for personal property and casualty **insurance** coverage (coverage primarily designed to cover personal, family or household **risk** exposures) are excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty **insurance** coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums are excluded from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage.

(iv) If a property and casualty **insurance** policy covers both commercial and personal **risk** exposures and is not primarily a personal **insurance** policy, insurers may allocate the premiums in accordance with the proportion of **risk** between commercial and personal 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 (d)(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 (d)(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 as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definitions of insured loss and property and casualty **insurance** by allocating the appropriate portion of premium income that falls within the definition of insured loss. The same allocation methodologies contained within the NAIC's ``Allocation of Surplus Lines and Independently Procured **Insurance** Premium Tax on Multi-State Risks Model Regulation'' for allocating premium between coverage within the definition of insured loss and all other coverage to ascertain the appropriate percentage of premium income to be included in direct earned premium may be used; and

(ii) For policies issued after January 1, 2003, premium for insured losses covered by property and casualty **insurance** under the Program must be priced separately by such eligible surplus line carrier insurers.

(4) Federally approved insurers. A federally approved insurer 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 (d)(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 commercial property and casualty **insurance** in connection with maritime, energy or aviation activities).

(e) 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), 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; or

(iii) Occurs at the premises of any United States mission.

(2)(i) A loss that occurs to an air carrier (as defined in 49 U.S.C. 40102), 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, is not an insured loss under section 102(5)(B) of the Act unless it is incurred by the air carrier or vessel outside the United States.

(ii) An insured loss to an air carrier or vessel outside the United States under section 102(5)(B) of the Act does not include losses covered by third party **insurance** contracts that are separate from the **insurance** coverage provided to the air carrier or vessel.

(f) 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);

(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 Quarterly Listing of Alien Insurers of the NAIC, or any successor to the NAIC;

(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 commercial 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 other class or type of captive insurer or other self-**insurance** arrangement by a municipality or other entity, to the extent provided in Treasury regulations issued under section 103(f) of the Act.

(ii) If an entity falls within more than one category described in paragraph (f)(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 premiums for any type of commercial property and casualty **insurance** coverage, except in the case of:

(i) State residual market **insurance** entities and State workers' compensation funds, to the extent provided in Treasury regulations; and

(ii) Other classes or types of captive insurers and other self-**insurance** arrangements by municipalities and other entities, if such entities are included in the Program by Treasury under regulations in this Part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(g) Insurer deductible means:

(1) For an insurer that was in existence on November 26, 2002 and has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent; and

(2) For an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year. If the insurer has not had a full year of operations during the applicable Program Year, the direct

earned premiums for the current Program Year will be annualized to determine the insurer deductible.

(h) NAIC means the National Association of **Insurance** Commissioners.

(i) 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.

(j) Program means the **Terrorism Risk Insurance** Program established by the Act.

(k) Program Years means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), and Program Year 3 (January 1, 2005 through December 31, 2005).

(l) Property and casualty **insurance** means commercial lines of property and casualty **insurance**, including excess **insurance**, workers' compensation **insurance**, and surety **insurance**. Property and casualty **insurance**:

(1) Includes commercial lines within 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 3--Farmowners Multiple Peril; 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 19.3--Commercial Auto No-Fault (personal injury protection); Line 19.4--Other Commercial Auto Liability; Line 21.2--Commercial Auto Physical Damage; Line 22--Aircraft (all perils); Line 24--Surety; Line 26--Burglary and Theft; 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 Multiple Peril Crop **insurance** reported on Line 2.2 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 1988 (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

(vii) Reinsurance or retrocessional reinsurance.

(m) Secretary means the Secretary of the Treasury.

(n) State means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(o) Treasury means the United States Department of the Treasury.

(p) 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).

Sec. 50.6 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.

Sec. 50.7 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 also available from the Department of the Treasury at http://www.treasury.gov/trip:

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002); and

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003).

Subpart B--Disclosures as Conditions for Federal Payment [Reserved]

Subpart C--Mandatory Availability [Reserved]

Subpart D--State Residual Market **Insurance** Entities; Workers' Compensation Funds [Reserved]

Subpart E--Self-**Insurance** Arrangements; Captives [Reserved]

Subpart F--Claims Procedures [Reserved]

Subpart G--Audit, Investigative and Civil Money Penalty Procedures [Reserved]

Subpart H--Recoupment and Surcharge Procedures [Reserved]

Dated: February 25, 2003.
Wayne A. Abernathy,
Assistant Secretary of the Treasury.
[FR Doc. 03-4831 Filed 2-27-03; 8:45 am]
BILLING CODE 4810-25-P

[Federal Register: March 27, 2003 (Volume 68, Number 59)]
[**Notices**]
[Page 15039-15041]
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[DOCID:fr27mr03-92]

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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

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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.
[FR Doc. 03-7304 Filed 3-26-03; 8:45 am]
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[Federal Register: August 26, 2003 (Volume 68, Number 165)]
[**Notices**]
[Page 51326-51327]
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[DOCID:fr26au03-160]

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DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 18, 2003.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104-13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 11000, 1750 Pennsylvania Avenue, NW., Washington, DC 20220.

Dates: Written comments should be received on or before September 25, 2003, to be assured of consideration.

Departmental Offices/Office of Financial Institutions Policy

OMB Number: 1505-0190.
Form Number: None.
Type of Review: Extension.
Title: **Terrorism Risk Insurance** Program Rebuttal of Controlling Influence Submissions.
Description: 31 CFR 50.8 specifies a rebuttal procedure that requires a written submission by a insurer that seeks to rebut a regulatory presumption of ``controlling influence'' over another insurer under the **Terrorism Risk Insurance** Program, to provide Treasury with necessary information to make a determination.
Respondents: Business or other for-profit, Federal Government.
Estimated Number of Respondents: 10.
Estimated Burden Hours Per Respondent: 40 hours.
Frequency of Response: Other (one time).
Estimated Total Reporting Burden: 400 hours.
Clearance Officer: Lois K. Holland, (202) 622-1563, Departmental Offices, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.
OMB Reviewer: Joseph F. Lackey, Jr., (202) 395-7316, Office of Management and Budget, Room 10235, New

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Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Treasury PRA Clearance Officer.
[FR Doc. 03-21801 Filed 8-25-03; 8:45 am]
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