

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 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 a 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 deductibles" and enable insurers to price and disclose 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 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 deductibles 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.

On March 25, 2003, Treasury issued a fourth interim guidance published at 68 FR 15039 on March 27, 2003 (Interim Guidance IV). Interim Guidance IV provided insurers a procedure by which they could seek to rebut a presumption of control established in Treasury's first set of interim final regulations. See *Previously Issued Regulations* in section C below and Treasury's Web site at <http://www.treasury.gov/trip>.

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.

C. *Previously Issued Regulations*

Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule together with a proposed rule. Both request comments by March 31, 2003. The first regulation, which is subpart A of new part 50 in title 31 of the CFR, covers the purpose and scope of the Program, key definitions, and certain general provisions.

II. Analysis of the Interim Final Rule

This interim final rule incorporates and clarifies statutory conditions for federal payment that require insurers to make certain disclosures to policyholders within specified time limits. The interim final rule also incorporates and clarifies statutory requirements that insurers must "make available" in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by the Act. The Act requires insurers to make such terrorism risk coverage available at terms, amounts, and other coverage limitations that do not differ materially from those applicable to losses arising from events other than acts of terrorism. The interim final rule generally incorporates interim guidance previously issued by Treasury, except as described in this preamble. In accordance with section 104(c) of the Act, Treasury has consulted with the National Association of Insurance Commissioners on this rule. Treasury is also issuing a companion proposed rule with request for comment.

Although Treasury is issuing these requirements in as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties. Published elsewhere in this separate part of this issue of the **Federal Register** is a notice of proposed rulemaking proposing to adopt the provisions of this interim final rule as a final rule.

A. *Disclosures*

One of the conditions for federal payments under section 103(b) of the Act is that the insurer provide "clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the federal share of

compensation for insured losses under the Program." The Act provides that in the case of any policy that is issued before the date of enactment of the Act (November 26, 2002), this disclosure must occur not later than 90 days thereafter (February 24, 2003). In the case of any policy that is issued within 90 days of the date of enactment, the disclosure must be made "at the time of offer, purchase, and renewal of the policy." In the case of any policy that is issued more than 90 days after the date of enactment, disclosure must be made "on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy."

The disclosure requirements are key provisions of the Act, both in terms of being a condition for payment and a mechanism to effectuate the other purposes of the Act. The Conference Report accompanying the Act states, in part:

Before receiving Federal assistance under this Act, an insurer must certify its claim for payment of insured losses, that a policyholder (or person acting on the policyholder's behalf) has filed a claim for such loss, and the insurer's compliance with the Act. The Secretary may not reimburse an insurer for such losses unless the insurer has provided clear and conspicuous disclosure to the policyholder of the premium charged for terrorism coverage and the Federal share of compensation. * * *

The Conferees intend this disclosure to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with the insurers, thereby reducing the insurers's (sic) exposure. * * * H.R. Conf. Rep. No. 107-779 (2002).

Section 50.12 of the interim final rule deals generally with disclosure requirements. Section 50.12(a) contains a new provision stating that whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances. Treasury is not specifying an exclusive form or means of satisfying the statutory disclosure requirements, and Treasury does not intend to adopt a practice of prescribing particular language or forms. However, in order to provide guidance to insurers, Treasury in previous interim guidance has deemed certain NAIC model forms to be acceptable in terms of satisfying the disclosure requirement and has stated that insurers may modify the forms to meet individual circumstances, or use other forms. This interim guidance has been incorporated into the interim final rule and provides a safe harbor (see section 50.17 of the interim final rule) for policies that were in force