

on the date of enactment or were issued within 90 days of enactment. For policies issued more than 90 days after enactment, section 50.17 (c) provides that insurers may continue to use certain NAIC model forms if appropriate or develop other disclosures that meet the requirements of sections 50.10(a) and 50.14.

Treasury stated in Interim Guidance II that an insurer may communicate the premium for insured losses in a manner that is consistent with standard business practice, which in some cases may be as a percentage of the overall policy premium. This interim final rule incorporates this guidance and also contains a provision in section 50.12(b) stating that an insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a "surcharge." It is inappropriate to use the term "surcharge" in the disclosures, because that term is used in the Act and the Program only in connection with the statutory recoupment procedure that requires certain surcharges to repay the federal financial assistance. Pursuant to the Act's recoupment provisions, any amount established by the Secretary as a terrorism loss risk-spreading premium is to be imposed as a policyholder premium "surcharge" on property and casualty insurance policies in force at that time. See sections 103(e)(7) and (8) of the Act.

In Interim Guidance III, Treasury indicated that the disclosures can be communicated by the use of channels, methods and forms of communication normally used to communicate similar policyholder information. This interim final rule incorporates that principle in section 50.12(c). In some contexts there may be a question about who is the "policyholder" with whom the insurer normally communicates. For example, a surety insurance company may normally deal with purchasers of surety bonds and communicate to them policyholder information similar to disclosures, although the bonds run in favor of other parties who would be paid in the event of loss. In such cases where there is some ambiguity as to who the policyholder is, insurance companies should rely on normal business practices in determining what parties should be provided disclosures.

Section 50.12(d) of the interim final rule reiterates guidance previously issued (see Interim Guidance I) to the effect that an insurer may communicate disclosures through an insurance broker or other intermediary acting as agent for the insurer if the insurer normally communicates with a policyholder in

this fashion. The insurer remains responsible for ensuring that the disclosures are provided to policyholders.

Section 50.12(e) of the interim final rule states that an insurer may demonstrate that it has complied with the disclosure requirement through use of appropriate systems and normal business practices that demonstrate a practice of compliance. As stated in Interim Guidance II, compliance with the disclosure provisions may be evidenced in a variety of ways, including a proof of mailing process and other methods consistent with normal forms of communication with policyholders. Treasury has taken this approach to enable insurers to utilize their normal business practices and risk management procedures as much as possible to minimize the administrative burden to insurers in implementing the Act.

In Interim Guidance III, Treasury stated that it expected to propose regulations that would require an insurer to certify that it complied with the required disclosure(s) to the policyholder on the underlying claim or claims submitted by the insurer for federal payment under the Program. This provision does not in any way impact the calculation of an insurer's direct earned premium as specified in section 50.5(d) (see the first interim final rule, 68 FR 9804), or the statutory recoupment provisions. Section 50.12(f) of this interim final rule clarifies that an insurer will only be required to certify with respect to those policies that form the basis for its claims, *i.e.*, not all other policies that are written by an insurance company. "Basis" means all policies used by an insurer to calculate its total insured loss.

Sections 50.13 and 50.14 of the interim final rule incorporate guidance previously issued (see Interim Guidance III) on what constitutes "offer, purchase, and renewal" and a "separate line item" for purposes of this provision of the Act. An insurer is deemed to be in compliance with the requirement of providing disclosure at the time of "offer, purchase, and renewal" of the policy if the insurer makes the disclosure when the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder, and makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, when the transaction is completed. An insurer is deemed to be in compliance with the "separate line item" requirement if the insurer makes the disclosure: on the declarations page of the policy;

elsewhere within the policy itself; or in any rider or endorsement that is made a part of the policy. Taken together, sections 50.13 and 50.14 allow for an insurer to make the required disclosure when the insurer first formally offers to provide coverage, and then to refer back to that disclosure using any of the options that qualify a separate line item.

Section 50.17 incorporates the safe harbors provided in interim guidance for certain NAIC model forms. These forms may be found on the NAIC Internet Web site at http://www.naic.org/pressroom/releases/disclose_one_final.pdf and http://www.naic.org/pressroom/releases/disclose_two_final.pdf. These forms are also accessible from the Treasury Web site at <http://www.treasury.gov/trip>. As noted above, these forms are only examples and are not the exclusive means for an insurer to comply with the disclosure requirements.

Section 50.18 of the interim final rule reiterates the disclosure requirements in section 105(c) of the Act for reinstatement of any preexisting terrorism exclusion. Section 50.19 is merely a cross-reference to the regulations in subpart D, which will be issued separately and will cover State residual market insurance entities and State workers' compensation funds.

The Act specifies certain time limits for disclosures to policyholders. Treasury will be evaluating whether an insurer has materially complied with these and other conditions for payment with respect to any claim. In so doing, Treasury expects to consider applicable facts and circumstances, including good faith efforts of the insurer to meet applicable time limits after enactment of the Act, and during the duration of the Program.

B. Mandatory Availability

Section 103(c) of the Act requires each entity that meets the definition of an insurer under the Act to (1) make available, in all of its property and casualty insurance policies, coverage for insured losses; and (2) make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. These requirements apply from the date of enactment (November 26, 2002) through the last day of Program Year 2 (December 31, 2004). The Secretary is required to determine, not later than September 1, 2004, based on the factors in section 108(d)(1) of the Act, whether the make available requirements should be extended through Program Year 3