

requirements were effective immediately upon enactment and remain ongoing requirements that apply to new and renewed policies throughout the life of the Program. In the event of an act of terrorism resulting in insured losses under the Program, insurers must certify, and Treasury must ascertain, that these disclosure requirements have been met before federal payment is made. Similarly, the make available requirements are critical elements of the Act. These requirements were effective immediately upon enactment and applied to policies in effect at that time. They will continue to apply to new and renewed policies through the end of 2004 (and if the requirements are extended by the Secretary, through 2005). Given the significance of the disclosure and make available requirements to policyholders and insurers, there is an urgent need to issue immediately effective regulations that incorporate and clarify interim guidance with regard to these requirements.

For the above reasons, 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 stated above, 31 CFR part 50 is amended as follows:

### PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 31 CFR part 50 continues to read as follows:

**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).

■ 2. Subpart B of 31 CFR part 50 is amended by adding §§ 50.10 through 50.14 and 50.17 through 50.19 to read as follows:

#### § 50.10 General disclosure requirements.

(a) *All policies.* As a condition for federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

(1) The premium charged for insured losses covered by the Program; and  
(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.

#### § 50.11 Definition.

Except as provided in § 50.18, for purposes of this subpart the term “disclosure” or “disclosures” refers to the disclosures described in section 103(b)(2) of the Act and § 50.10.

#### § 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.17 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. 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.”

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of agent.* If an insurer normally communicates with a policyholder through an insurance broker or other intermediary acting as agent for the insurer, an insurer may provide disclosures through such an agent. The insurer remains responsible for ensuring that disclosures are provided to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for federal payment under the Program.

#### § 50.13 Offer, purchase, and renewal.

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” under § 50.10(c) and (d) if the insurer:

(a) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(b) Makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

#### § 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a “separate line item in the policy” under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement that is made a part of the policy.

#### § 50.17 Use of model forms.

(a) *Policies in force on the date of enactment.* (1) An insurer that is required to make the disclosure under § 50.10(b) and that makes no change in the existing premium, is deemed to be in compliance with the disclosure