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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 2000 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. The Interim Final Rule

The interim final rule established Subpart A of a new Part 50 in Title 31 of the Code of Federal Regulations. Subpart A of new Part 50 contains certain general provisions and definitions of Program terms. The definitions contained in the interim final rule provide the foundation for participation by insurers under the Federal reinsurance Program created by the Act.

Some of the definitions in the interim final rule were taken virtually verbatim from the Act because they do not need further clarification. For other definitions, the interim final rule generally incorporated previously issued interim guidance provided by Treasury as it pertains to Program terms, for example, the terms "insurer," "affiliate," "property and casualty insurance" and "direct earned premium." Such interim guidance was

published at 67 FR 76206 (December 11, 2002), 67 FR 78864 (December 26, 2002) and 68 FR 4544 (January 29, 2003). In several areas, the interim final rule made clarifying modifications to, or supplemented, the previously issued interim guidance.

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 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 National Association of Insurance Commissioners (NAIC) in implementing definitional 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.

II. Summary of Comments and Final Rule

Treasury received over 40 comments on the interim final rule. Comments were submitted by insurance companies, industry trade associations, the NAIC, two cities, and by two members of Congress. After review and careful consideration of these comments, as well as additional research and consultation with the NAIC, Treasury is now promulgating a final rule concerning TRIA definitions. In general, the final rule reflects the interim final rule. However, revisions and clarifications were made in several areas, based on comments received. For example, revisions were made to the rebuttable presumptions to controlling influence determinations under the definition of "affiliate," and clarifications were made to the definitions of "direct earned premium" and "commercial property and casualty insurance." The final rule, including changes and clarifications, is discussed in the summary below.

A. "Act of Terrorism" (Section 50.5.b)

The interim final rule incorporated the statutory definition of "act of terrorism" found in section 102(1) of the Act. In that regard, the interim final rule provides that an "act of terrorism" for