

necessary, the previously issued interim final rule.

Accordingly, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the final rule to become effective immediately upon publication.

This 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.

It is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The Act requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Although the Act affects small insurers, the proposed rule also gives insurers flexibility in calculating their direct earned premium for policies that have both commercial and personal exposures, and it provides a safe harbor to exclude policies that have incidental coverage for commercial purposes. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. 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 insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

The collection of information contained in § 50.8 of this final rule 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 a presumption that the insurer exercises a controlling influence over the management or policies of another insurer. The collection of information is mandatory with respect to an insurer seeking to rebut a presumption. 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, Room 3160 Annex, Department of the 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.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, the interim final rule adding 31 CFR Part 50, which was published at 68 FR 9804 on February 28, 2003, is adopted as a final rule with the following changes:

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. Section 50.2 is added to read as follows:

§ 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

■ 3. Section 50.5(c), (d)(1), (f)(1), and (l) are revised to read as follows:

§ 50.5 Definitions.

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(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) The 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) The 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) An insurer described in paragraph (c)(2)(i) or (c)(2)(ii) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, if an insurer is not described in paragraph (c)(2)(i) or (c)(2)(ii) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under any State law, and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under State law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section.

(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), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, 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 any time 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, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, 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.

(iv) If paragraphs (c)(4)(i) through (c)(4)(iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;