

notice, especially where the fund does not charge additional premium for insured losses.

Section 103(b) of the Act requires that insurers make certain disclosures to policyholders as a condition for federal payment under the Act. Section 50.10 of the regulations states, in part, that an insurer must 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. Congress required this disclosure in order "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 insurers thereby reducing the insurers' exposure." H.R. Conf. Rep. No. 107-779, at 24 (2002).

After consideration of the comment and the relevant provisions of the Act, and following consultation with NAIC and additional study of the issue, Treasury is applying disclosure provisions to residual market mechanisms that have not yet issued disclosures to policyholders. Thus, Treasury is issuing regulations relating to the disclosures required of State residual market insurance entities and State workers' compensation funds by amending section 50.19 of subpart B in this final rule. These regulations supercede the earlier interim guidance referenced above and the safe-harbor provided in that guidance will no longer be available to these insurers.

Section 50.19 generally follows the regulations applicable to all other insurers. In order to provide residual market insurance mechanisms with sufficient time to come into compliance (if they are not already), section 50.19 provides a 90-day safe harbor. For policies in force on October 17, 2003, or issued or renewed on or before January 15, 2004, the disclosure is required by the Act but the condition for Federal payment is waived with regard to those policies until January 15, 2004. In section 50.12(c), Treasury has provided that "an insurer may provide disclosure using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders." Section 50.19(b) extends this rule to State residual market insurance entities and State workers' compensation funds and clarifies that while disclosures may be made by the residual market

mechanism, the individual insurers that participate in the residual market, or the servicing carriers (depending on their normal business practices), the ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer that will be filing any claim. In accordance with other requirements of subpart B, disclosure must be clear and conspicuous, made on a separate line item in the policy at the time of offer, purchase, and renewal of the policy.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for Federal payment contained in the Act applied immediately to those entities that come within the Act's definition of "insurer."

This rule amends subpart D to part 50 in title 31 that addresses how the Program applies to State residual market insurance entities and State workers' compensation funds. This rule also amends section 50.19 of subpart B. This rule is intended to respond to section 103(d)(1) of the Act, which directs Treasury to issue regulations that apply the provisions of the Act to State residual market insurance entities and State workers' compensation funds. Given the importance of applying regulations to State residual market insurance entities and State workers' compensation funds, there is an urgent need to issue immediately effective regulations.

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.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act itself requires State residual market insurance entities and State workers' compensation funds to participate in the Program, and these entities or funds are generally not small entities.

The Act itself requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. Although insurers that participate in sharing profits and losses of a State residual market insurance entity or State workers' compensation fund may include small entities, the proposed rule is based on existing business practices of residual market entities in determining the impact on participating insurers. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. 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. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for 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 50.19 of subpart B is revised to read as follows:

§ 50.19 1General disclosure requirements for State residual market insurance entities and State worker's compensation funds.

(a) *Policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004.* For policies in force on October 17, 2003, or renewed or issued on or before January 15, 2004, the disclosure required by section 103(b) of the Act as a condition for Federal payment is waived for those State residual market insurance entities and State workers' compensation funds that since November 26, 2002, have not provided disclosures to policyholders, until January 15, 2004, after which disclosures are to be made to policyholders for policies then in force and subsequently issued.