

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.

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 which, as defined by the Act, is 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 end on December 31, 2005.

Each entity that meets the Act's definition of "insurer" (well over 2000 firms) must participate in the Program. 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 and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's involvement prior to expiration of the Program. An insurer's deductible is calculated based on the value of "direct earned premiums" collected over certain statutory periods. Once an insurer has met its individual deductible, the federal payments cover 90 percent of the insured losses above the deductible, subject to an industry-aggregate limit of \$100 billion.

The Program provides a federal reinsurance backstop for three years. The Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative federal payments for insured losses that have been covered under any other federal program.

The mandatory availability or "make available" provisions in section 103(c) of the Act require that, for Program Year 1 and Program Year 2 and, if so determined by Treasury, in Program Year 3, all entities that meet the Act's definition of insurer must make available, in all of their property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism. This coverage can not differ materially from the terms, amounts, and other coverage limitations applicable to

losses arising from events other than acts of terrorism.

As conditions for federal payment under the Program, clear and conspicuous disclosures must be provided by insurers to the policyholders of the premium charged for insured losses covered by the Program and the federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers submit a claim to Treasury for federal payment as well as certain certifications. Treasury will engage in rulemaking to prescribe claims procedures for the Program at a later date.

The Act also contains provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 of the Act 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. The Act provides the United States with the right of subrogation with respect to any payment or claim paid by the United States under the Program.

1. Three Year Program

The duration of the Program is three years. The Act was signed into law on November 26, 2002 and section 108(a) of the Act provides that, "[t]he Program shall terminate on December 31, 2005." Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation and reimbursement for insured losses arising out of any act of terrorism occurring during the period between November 26, 2002 and December 31, 2005. The duration of the Program and the Program's termination date should not be confused with the make available requirements contained in section 103(c). As reflected in both the interim final and final rules, the make available requirements in section 103(c) of the Act apply to all insurers, through the end of Program Year 2. However, the Secretary of the Treasury may determine, not later than September 1, 2004, to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. Regardless of whether the make available requirements of section 103 are extended, the Program and the Act's federal backstop for insured losses for acts of terrorism continue through December 31, 2005.

2. Program Implementation Goals

In implementing the Program, Treasury is guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has closely coordinated its implementation of all aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in 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 insurance coverage when the Program expires on December 31, 2005.

B. The Interim Final Rule

The interim final rule was published in the **Federal Register** at 68 FR 19302 (April 18, 2003). It added sections 50.10 through 50.14 and 50.17 through 50.19 to Subpart B, and sections 50.20, 50.21, 50.23, and 50.24 to Subpart C of Part 50 in Title 31, Code of Federal Regulations. Subpart A of Part 50, which addresses the scope and purpose of the Program, key definitions and certain general provisions, was finalized and published in the **Federal Register** at 68 FR 41250 (July 11, 2003) and subsequently revised at 68 FR 48280 (August 13, 2003). Subpart B incorporates and clarifies certain conditions for federal payment contained in section 103(b) of the Act that require insurers to make certain clear and conspicuous disclosures to their policyholders with regard to terrorism risk insurance for insured losses under the Program. Subpart C incorporates and clarifies requirements in section 103(c) of the Act that insurers "make available," in all of their commercial property and casualty insurance policies, coverage for insured losses resulting from an act of terrorism as defined by section 102(1) of the Act. In this regard, section 103(c) requires insurers to make such terrorism risk coverage available at terms, amounts, and other coverage limitations that do not differ materially from those applicable to losses arising from events other than from acts of terrorism.