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## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

RIN 1505-AB07

#### Terrorism Risk Insurance Program; Initial Claims Procedures

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (the Act). That Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. This proposed rule contains procedures for filing claims for payment of the federal share of compensation for insured losses under the Program and incorporates statutory conditions for federal payment. In particular, the proposed rule addresses requirements for loss certification and associated recordkeeping requirements; provides guidance on what is payable as the federal share of insured losses; and sets forth requirements for investigating and auditing claims under the Program. The rule generally builds upon previous interim guidances and final rules issued by Treasury, particularly in areas involving definitions and disclosure requirements. This proposed rule is the fourth in a series of regulations Treasury has issued to implement the Act.

**DATES:** Written comments may be submitted on or before December 31, 2003.

**ADDRESSES:** Submit comments by e-mail to [triacomment@do.treas.gov](mailto:triacomment@do.treas.gov) or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Ave., NW., Washington, DC 20220. All comments should be captioned with "Proposed Rule on Claim Procedures". Please include your name, affiliation, address, e-mail address and telephone number in your comment. Comments will be

available for public inspection by appointment only at the Reading Room of the Treasury Library. To make appointments, call (202) 622-0990 (not a toll-free number).

#### FOR FURTHER INFORMATION CONTACT:

David Brummond, Legal Counsel; Howard Leikin, Senior Insurance Advisor; C. Christopher Ledoux, Senior Attorney; Terrorism Risk Insurance Program (202) 622-6770 (not a toll-free number).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322) (the Act). The Act was effective immediately. 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.

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 (the Program), including the issuance of regulations and procedures. The Program provides a three-year federal reinsurance backstop for insured losses from an act of terrorism until the Program ends 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 share of compensation for insured losses each year until the Program expires. 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 Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act reduces the Federal share of compensation for insured losses that have been covered under any other federal program. 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.

##### II. Previous Rulemaking

This proposed rule is the latest in a series of rules issued by Treasury under the Act. In implementing the Program, Treasury has sought to achieve several goals. First, an effort has been made 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 all 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.

To assist insurers, policyholders and other interested parties in complying with immediately applicable and time-sensitive requirements of the Act prior to the issuance of regulations, Treasury issued interim guidance in four separate notices on December 3 and 18, 2002 and on January 22 and March 25, 2003. Treasury publicly released these interim guidance notices on its Program Web site <http://www.Treasury.gov/trip> and published each notice in the **Federal Register** [67 FR 76206 (December 11,