

insurance without any reference to the size or scope of the insurer or the insured. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. A regulatory flexibility analysis is thus not required.

Paperwork Reduction Act. The collection of information (recordkeeping requirement) contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). The forms to be prescribed by Treasury will be the subject of a separate submission to OMB on which the public will be provided an opportunity to comment. 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.

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to the Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (preferably by Fax to 202-395-6974, or by e-mail to jlackeyj@omb.eop.gov). A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by December 31, 2003.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The collection of information in the proposed rule is the recordkeeping requirement in § 50.61. The information will be used by Treasury (or its designees) to audit or examine claims for Federal payments submitted by insurers. The recordkeeping requirement is mandatory for any insurer that seeks payment of a Federal share of compensation.

If an act of terrorism is certified under the Act, the number of respondents, if any, will be determined by the size and nature of the certified act of terrorism. Because of the extreme uncertainty regarding any such event, a "best estimate" has been developed based on the considered judgment of Treasury. This estimate has 100 insurers sustaining insured losses; each of these insurers would be required to retain records concerning 100 claims. Treasury believes that the records that insurers would be required to retain under § 50.61 largely duplicate the records that insurers would normally retain in the course of processing and administering claims, and that the burden associated with the proposed rule therefore is minimal. Accordingly, Treasury estimates that the proposed rule will impose 5 minutes of burden with respect to each claim; the estimated annual burden per recordkeeper is therefore 8.33 hours (100 claims × 5 minutes) and the estimated total annual burden is 833 hours (8.33 hours × 100 insurers).

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

For the reasons stated above, 31 CFR part 50 is proposed to be 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. Revise § 50.5(e) to read as follows:

§ 50.5 Definitions.

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(e) *Insured loss.* (1) The term *insured loss* means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss:

- (i) Occurs within the United States;
- (ii) Occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs; or
- (iii) Occurs at the premises of any United States mission.

(2)(i) A loss that occurs to an air carrier (as defined in 49 U.S.C. 40102), to a United States flag vessel, or a vessel based principally in the United States,

on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, is not an insured loss under section 102(5)(B) of the Act unless it is incurred by the air carrier or vessel outside the United States.

(ii) An insured loss to an air carrier or vessel outside the United States under section 102(5)(B) of the Act does not include losses covered by third party insurance contracts that are separate from the insurance coverage provided to the air carrier or vessel.

(3) The term *insured loss* includes loss adjustment expenses incurred by an insurer in connection with insured losses that are allocated and identified by claim file in insurer records, including expenses incurred in the investigation, adjustment and defense of claims, but excluding staff adjuster salaries and any allocations of other internal insurer expenses.

(4) The term *insured loss* does not include:

(i) Punitive or exemplary damages awarded or paid in connection with the Federal cause of action specified in section 107(a)(1) of the Act. The term "punitive or exemplary damages" means damages that are not compensatory but are an award of money made to a claimant solely to punish or deter; or

(ii) Extra contractual damages awarded, or obligations paid by an insurer, including but not limited to, punitive, exemplary, or special damages, or damages in excess of policy limits.

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3. New Subparts F and G of Part 50 are added to read as follows:

Subpart F—Claims Procedures

Sec.

- 50.50 Federal share of compensation.
- 50.51 Adjustments to the Federal share of compensation.
- 50.52 Initial Notice of Insured Loss.
- 50.53 Loss certifications.
- 50.54 Payment of Federal share of compensation.

Subpart F—Claims Procedures

§ 50.50 Federal share of compensation.

(a) *General.* The Treasury will pay to insurers the Federal share of compensation for insured losses resulting from acts of terrorism as provided in section 103 of the Act. Treasury shall determine the amount of payment of the Federal share of compensation based upon a determination by Treasury, or upon Treasury's reservation of rights and a later determination, that: