

**DEPARTMENT OF THE TREASURY****31 CFR Part 50****RIN 1505-AA96****Departmental Offices; Terrorism Risk Insurance Program****AGENCY:** Departmental Offices, Treasury.**ACTION:** Interim final rule with request for comments.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (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 interim final rule sets forth the purpose and scope of the Program and key definitions that Treasury will use in implementing the Program. In general, this interim final rule incorporates interim guidance previously issued by Treasury concerning these definitions. However, the preamble indicates those areas in which Treasury has modified the interim guidance. This interim final rule is the first of a series of regulations Treasury will issue to implement the Program.

**DATES:** This interim rule is effective February 28, 2003. Written comments on this interim final rule may be submitted to the Treasury Department on or before March 31, 2003.

**ADDRESSES:** Submit comments (if hard copy, preferably an original and two copies) to Office of Financial Institutions Policy, Attention: Terrorism Risk Insurance Program Public Comment Record, Room 3160 Annex, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted by electronic mail to: [triacomment@do.treas.gov](mailto:triacomment@do.treas.gov). Please include your name, affiliation, address, e-mail address and telephone number in your comment. All comments should be captioned with "February 28, 2003 TRIA Comments." 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:** Mario Ugoletti, Deputy Director, Office

of Financial Institutions Policy (202) 622-2730 or Martha Ellett, Attorney-Advisor, Office of the Assistant General Counsel (Banking & Finance), (202) 622-0480 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:****I. Background****A. Terrorism Risk Insurance Act of 2002**

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (Public Law 107-297, 116 Stat. 2322). The Act was effective immediately. 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 as defined in the Act and 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 sunset on December 31, 2005.

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.

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. Thus, the Program provides a Federal reinsurance backstop for a temporary period of time. The Act also provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit.

Each entity that meets the definition of "insurer" (well over 2,000 firms) must participate in the Program. From the date of enactment of the Act through the last day of Program Year 2 (December 31, 2004), insurers under the Program must "make available" terrorism risk insurance in their commercial property and casualty insurance policies and the coverage must not differ materially from the terms, amounts and other coverage limitations applicable to commercial property and casualty losses arising from events other than acts of terrorism. The Act permits Treasury to extend the "make available" requirement into

Program Year 3, based on an analysis of factors referenced in the study required by section 108(d)(1) of the Act, and not later than September 1, 2004.

An insurer's deductible increases each year of the Program, thereby reducing the Federal government's involvement prior to sunset of the Program. An insurer's deductible is based on "direct earned premiums" over a statutory Transition Period and the three Program Years. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an aggregate annual cap of \$100 billion. The Act prohibits duplicative payments for insured losses that have been covered under any other Federal program.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program, and must submit a claim and certain certifications to Treasury. Treasury will be prescribing claims procedures at a later date.

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

**B. Previously Issued Interim Guidance**

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 these and future regulations, Treasury issued interim guidance in three separate notices. 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**.

Treasury released the first notice of Interim Guidance on December 3, 2002, within a week of the Act's enactment (Interim Guidance I). Interim Guidance I was published at 67 FR 76206 on December 11, 2002 and addressed several issues pertaining to immediately applicable provisions of the Act, including statutory disclosure obligations of insurers as conditions for Federal payment under the Program and the requirement that an insurer "make