

**§ 29.524**

**§ 29.524 Financial hardship.**

Financial hardship may be deemed to exist when the debtor needs substantially all of his or her current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary living expenses during the projected period of collection. Financial hardship will not be found to exist when the debtor merely establishes that the repayment causes a financial burden, i.e., when it is inconvenient to repay the debt. If there are anticipated changes in income or expenses that would allow for the recovery of the overpayment at a later date, the Department may suspend collection action until a future date.

(a) *Considerations.* Pertinent considerations in determining whether recovery would cause financial hardship include the following:

(1) The debtor's financial ability to pay at the time collection is scheduled to be made, and

(2) Income to other family member(s), if such member's ordinary and necessary living expenses are included in expenses reported by the debtor.

**§ 29.525 Ordinary and necessary living expenses.**

An individual's ordinary and necessary living expenses include rent, mortgage payments, utilities, maintenance, transportation, food, clothing, insurance (life, health, and accident), taxes, installment payments for which the individual is already liable, medical expenses, support expenses for which the individual is legally responsible, and other miscellaneous expenses that the individual can establish as being ordinary and necessary.

**§ 29.526 Waiver precluded.**

Waivers will not be offered or granted when—

(1) The overpayment was obtained by fraud, misrepresentation, or by improper negotiation of checks or withdrawal of electronic fund transfer payments after the death of the payee; or

(2) The overpayment was made to an estate and a timely demand for repayment is made prior to the final disbursement by the administrator or executor of the estate.

**31 CFR Subtitle A (7-1-04 Edition)**

**PART 50—TERRORISM RISK INSURANCE PROGRAM**

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## Office of the Secretary of the Treasury

## § 50.5

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).

SOURCE: 68 FR 9811, Feb. 28, 2003, unless otherwise noted.

### Subpart A—General Provisions

#### § 50.1 Authority, purpose and scope.

(a) *Authority.* This Part is issued pursuant to authority in Title I of the Terrorism Risk Insurance Act of 2002, Pub. L. 107-297, 116 Stat. 2322.

(b) *Purpose.* This Part contains rules prescribed by the Department of the Treasury to implement and administer the Terrorism Risk Insurance Program.

(c) *Scope.* This Part applies to insurers subject to the Act and their policyholders.

#### § 50.2 Responsible office.

The office responsible for the administration of the Terrorism Risk Insurance Act in the Department of the Treasury is the Terrorism Risk Insurance Program Office. The Treasury Assistant Secretary for Financial Institutions prescribes the regulations under the Act.

[68 FR 41264, July 11, 2003.]

#### § 50.4 Mandatory participation in Program.

Any entity that meets the definition of an insurer under the Act is required to participate in the Program.

#### § 50.5 Definitions.

For purposes of this Part:

(a) *Act* means the Terrorism Risk Insurance Act of 2002.

(b) *Act of terrorism*—(1) *In general.* The term *act of terrorism* means any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States:

(i) To be an act of terrorism;

(ii) To be a violent act or an act that is dangerous to human life, property, or infrastructure;

(iii) To have resulted in damage within the United States, or outside of the United States in the case of:

(A) An air carrier (as defined in 49 U.S.C. 40102) or 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); or

(B) The premises of a United States mission; and

(iv) To have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(2) *Limitations.* The Secretary is not authorized to certify an act as an act of terrorism if:

(i) The act is committed as part of the course of a war declared by the Congress (except with respect to any coverage for workers' compensation); or

(ii) property and casualty losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

(3) *Judicial review precluded.* The Secretary's certification of an act of terrorism, or determination not to certify an act as an act of terrorism, is final and is not subject to judicial review.

(c)(1) *Affiliate* means, with respect to an insurer, any entity that controls, is controlled by, or is under common control with the insurer. An affiliate must itself meet the definition of insurer to participate in the Program.

(2) For purposes of paragraph (c)(1) of this section, an insurer has control over another insurer for purposes of the Program if:

(i) The insurer directly or indirectly or acting through one or more other persons owns, controls, or has power to vote 25 percent or more of any class of voting securities of the other insurer;

(ii) The insurer controls in any manner the election of a majority of the directors or trustees of the other insurer; or

(iii) The Secretary determines, after notice and opportunity for hearing, that an insurer directly or indirectly exercises a controlling influence over the management or policies of the other insurer, even if there is no control as defined in paragraph (c)(2)(i) or (c)(2)(ii) of this section.

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(3) An insurer described in paragraph (c)(2)(i) or (c)(2)(ii) of this section is conclusively deemed to have control.

(4) For purposes of a determination of controlling influence under paragraph (c)(2)(iii) of this section, if an insurer is not described in paragraph (c)(2)(i) or (c)(2)(ii) of this section, the following rebuttable presumptions will apply:

(i) If an insurer controls another insurer under any State law, and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer that has control under State law exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section.

(ii) If an insurer provides 25 percent or more of another insurer's capital (in the case of a stock insurer), policyholder surplus (in the case of a mutual insurer), or corporate capital (in the case of other entities that qualify as insurers), and at least one of the factors listed in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer providing such capital, policyholder surplus, or corporate capital exercises a controlling influence over the management or policies of the receiving insurer for purposes of paragraph (c)(2)(iii) of this section.

(iii) If an insurer, at any time during a Program Year, supplies 25 percent or more of the underwriting capacity for that year to an insurer that is a syndicate consisting of a group including incorporated and individual unincorporated underwriters, and at least one of the factors in paragraph (c)(4)(iv) of this section applies, there is a rebuttable presumption that the insurer exercises a controlling influence over the syndicate for purposes of paragraph (c)(2)(iii) of this section.

(iv) If paragraphs (c)(4)(i) through (c)(4)(iii) of this section are not applicable, but two or more of the following factors apply to an insurer, with respect to another insurer, there is a rebuttable presumption that the insurer exercises a controlling influence over the management or policies of the other insurer for purposes of paragraph (c)(2)(iii) of this section:

(A) The insurer is one of the two largest shareholders of any class of voting stock;

(B) The insurer holds more than 35 percent of the combined debt securities and equity of the other insurer;

(C) The insurer is party to an agreement pursuant to which the insurer possesses a material economic stake in the other insurer resulting from a profit-sharing arrangement, use of common names, facilities or personnel, or the provision of essential services to the other insurer;

(D) The insurer is party to an agreement that enables the insurer to influence a material aspect of the management or policies of the other insurer;

(E) The insurer would have the ability, other than through the holding of revocable proxies, to direct the votes of more than 25 percent of the other insurer's voting stock in the future upon the occurrence of an event;

(F) The insurer has the power to direct the disposition of more than 25 percent of a class of voting stock of the other insurer in a manner other than a widely dispersed or public offering;

(G) The insurer and/or the insurer's representative or nominee constitute more than one member of the other insurer's board of directors; or

(H) The insurer or its nominee or an officer of the insurer serves as the chairman of the board, chairman of the executive committee, chief executive officer, chief operating officer, chief financial officer or in any position with similar policymaking authority in the other insurer.

(5) An insurer that is not described in paragraph (c)(2)(i) or (c)(2)(ii) of this section may request a hearing in which the insurer may rebut a presumption of controlling influence under paragraph (c)(4)(i) through (c)(4)(iv) of this section or otherwise request a determination of controlling influence by presenting and supporting its position through written submissions to Treasury, and in Treasury's discretion, through informal oral presentations, in accordance with the procedure in § 50.8.

(d) *Direct earned premium* means a direct earned premium for all commercial property and casualty insurance issued by any insurer for insurance against all losses, including losses from

an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance.)

(i) Premium information as reported to the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent of commercial property and casualty coverage issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures, with the exception of coverage written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of commercial property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Commercial property and casualty insurance coverage insuring against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of commercial property and casualty insurance, but that includes incidental coverage for

commercial property and casualty insurance insuring against losses occurring at such locations, is primarily non-Program coverage, and therefore premiums also may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial property and casualty insurance coverage insuring against losses at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the total direct earned premium is attributable to such coverage. For purposes of the Program, commercial coverage combined with coverages that otherwise do not meet the definition of commercial property and casualty insurance is incidental if less than 25 percent of the total direct earned premium is for such coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of commercial property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components, in order to ascertain direct earned premium.

(2) *Insurers that do not report to NAIC.* An insurer that does not report to the NAIC, but that is licensed or admitted by any State (such as certain farm or county mutual insurers), should use the guidance provided in paragraph (d)(1) of this section to assist in ascertaining its direct earned premium.

(i) Direct earned premium may be ascertained by adjusting data maintained by such insurer or reported by such insurer to its State regulator to reflect a breakdown of premiums for commercial and personal property and casualty exposure risk as described in paragraph (d)(1) of this section and, if necessary, re-stated to reflect the actual method of determining direct

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earned premium versus direct premium.

(ii) Such an insurer should consider other types of payments that compensate the insurer for risk of loss (contributions, assessments, etc.) as part of its direct earned premium.

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definition of property and casualty insurance and the locations described in section 102(5)(A) and (B) of the Act by allocating the appropriate portion of premium income for losses for property and casualty insurance at such locations. The same allocation methodologies contained within the NAIC's "Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation" for allocating premium between coverage for property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act and all other coverage, to ascertain the appropriate percentage of premium income to be included in direct earned premium, may be used.

(ii) For policies issued after January 1, 2003, premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, must be priced separately by such eligible surplus line carriers.

(4) *Federally approved insurers.* A federally approved insurer under section 102(6)(A)(iii) of the Act should use a methodology similar to that specified for eligible surplus line carrier insurers in paragraph (d)(3) of this section to calculate its direct earned premium. Such calculation should be adjusted to reflect the limitations on scope of insurance coverage under the Program (*i.e.* to the extent of federal approval of commercial property and casualty insurance in connection with maritime, energy or aviation activities).

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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.

(f) *Insurer* means any entity, including any affiliate of the entity, that meets the following requirements:

(1)(i) The entity must fall within at least one of the following categories:

(A) It is licensed or admitted to engage in the business of providing primary or excess insurance in any State, (including, but not limited to, State licensed captive insurance companies, State licensed or admitted risk retention groups, and State licensed or admitted farm and county mutuals), and, if a joint underwriting association, pooling arrangement, or other similar entity, then the entity must:

(1) Have gone through a process of being licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator,

which process generally applies to insurance companies or is similar in scope and content to the process applicable to insurance companies;

(2) Be generally subject to State insurance regulation, including financial reporting requirements, applicable to insurance companies within the State; and

(3) Be managed independently from other insurers participating in the Program;

(B) It is not licensed or admitted to engage in the business of providing primary or excess insurance in any State, but is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor to the NAIC;

(C) It is approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity, but only to the extent of such federal approval of commercial property and casualty insurance coverage offered by the insurer in connection with maritime, energy, or aviation activity;

(D) It is a State residual market insurance entity or State workers' compensation fund; or

(E) As determined by the Secretary, it falls within any other class or type of captive insurer or other self-insurance arrangement by a municipality or other entity, to the extent provided in Treasury regulations issued under section 103(f) of the Act.

(ii) If an entity falls within more than one category described in paragraph (f)(1)(i) of this section, the entity is considered to fall within the first category within which it falls for purposes of the Program.

(2) The entity must receive direct earned premiums for any type of commercial property and casualty insurance coverage, except in the case of:

(i) State residual market insurance entities and State workers' compensation funds, to the extent provided in Treasury regulations; and

(ii) Other classes or types of captive insurers and other self-insurance arrangements by municipalities and other entities, if such entities are included in the Program by Treasury under regulations in this Part.

(3) The entity must meet any other criteria as prescribed by Treasury.

(g) *Insurer deductible* means:

(1) For an insurer that was in existence on November 26, 2002 and has had a full year of operations during the calendar year immediately preceding the applicable Program Year:

(i) For the Transition Period (November 26, 2002 through December 31, 2002), the value of an insurer's direct earned premiums over calendar 2001, multiplied by 1 percent;

(ii) For Program Year 1 (January 1, 2003 through December 31, 2003), the value of an insurer's direct earned premiums over calendar year 2002, multiplied by 7 percent;

(iii) For Program Year 2 (January 1, 2004 through December 31, 2004), the value of an insurer's direct earned premiums over calendar year 2003, multiplied by 10 percent;

(iv) For Program Year 3 (January 1, 2005 through December 31, 2005), the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent; and

(2) For an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year. If the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized to determine the insurer deductible.

(h) *NAIC* means the National Association of Insurance Commissioners.

(i) *Person* means any individual, business or nonprofit entity (including those organized in the form of a partnership, limited liability company, corporation, or association), trust or estate, or a State or political subdivision of a State or other governmental unit.

(j) *Program* means the Terrorism Risk Insurance Program established by the Act.

(k) *Program Years* means the Transition Period (November 26, 2002 through December 31, 2002), Program Year 1 (January 1, 2003 through December 31, 2003), Program Year 2 (January 1, 2004 through December 31, 2004), and Program Year 3 (January 1, 2005 through December 31, 2005).

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(l) *Property and casualty insurance* means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance, and

(1) Means commercial lines within only the following lines of insurance from the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14): Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery; and

(2) Does not include:

(i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*), or any other type of crop or livestock insurance that is privately issued or reinsured (including crop insurance reported under either Line 2.1—Allied Lines or Line 2.2—Multiple Peril (Crop) of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14);

(ii) Private mortgage insurance (as defined in section 2 of the Homeowners Protection Act of 1988 (12 U.S.C. 4901) or title insurance;

(iii) Financial guaranty insurance issued by monoline financial guaranty insurance corporations;

(iv) Insurance for medical malpractice;

(v) Health or life insurance, including group life insurance;

(vi) Flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*) or earthquake insurance reported under Line 12 of the NAIC's Exhibit of Premiums and Losses (commonly known as Statutory Page 14); or

(vii) Reinsurance or retrocessional reinsurance.

(m) *Secretary* means the Secretary of the Treasury.

(n) *State* means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands, and any territory or possession of the United States.

(o) *Treasury* means the United States Department of the Treasury.

(p) *United States* means the several States, and includes the territorial sea and the continental shelf of the United States, as those terms are defined in the Violent Crime Control and Law Enforcement Act of 1994 (18 U.S.C. 2280 and 2281).

[68 FR 9811, Feb. 28, 2003, as amended at 68 FR 41264, July 11, 2003; 68 FR 48281, Aug. 13, 2003]

EFFECTIVE DATE NOTE: At 69 FR 39306, June 29, 2004, § 50.5 was revised, effective July 29, 2004. For the convenience of the user, the revised text is set forth as follows:

§ 50.5 Definitions.

\* \* \* \* \*

(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 reasonable 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 salaries, overhead, and other insurer expenses that would have been incurred notwithstanding the insured loss.

(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 against, or paid by, an insurer; or

(iii) Payments by an insurer in excess of policy limits.

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#### § 50.6 Rule of construction for dates.

Unless otherwise expressly provided in the regulation, any date in these regulations is intended to be applied so that the day begins at 12:01 a.m. and ends at midnight on that date.

#### § 50.7 Special rules for Interim Guidance safe harbors.

(a) An insurer will be deemed to be in compliance with the requirements of the Act to the extent the insurer reasonably relied on Interim Guidance prior to the effective date of applicable regulations.

(b) For purposes of this section, Interim Guidance means the following documents, which are also available from the Department of the Treasury at <http://www.treasury.gov/trip>:

(1) Interim Guidance I issued by Treasury on December 3, 2002, and published at 67 FR 76206 (December 11, 2002);

(2) Interim Guidance II issued by Treasury on December 18, 2002, and published at 67 FR 78864 (December 26, 2002); and

(3) Interim Guidance III issued by Treasury on January 22, 2003, and published at 68 FR 4544 (January 29, 2003).

#### § 50.8 Procedure for requesting determinations of controlling influence.

(a) An insurer or insurers not having control over another insurer under

§ 50.5(c)(2)(i) or (c)(2)(ii) may make a written submission to Treasury to rebut a presumption of controlling influence under § 50.5(c)(4)(i) through (iv) or otherwise to request a determination of controlling influence. Such submissions shall be made to the Terrorism Risk Insurance Program Office, Department of the Treasury, Suite 2110, 1425 New York Ave NW, Washington, D.C. 20220. The submission should be entitled, “Controlling Influence Submission,” and should provide the full name and address of the submitting insurer(s) and the name, title, address and telephone number of the designated contact person(s) for such insurer(s).

(b) Treasury will review submissions and determine whether Treasury needs additional written or orally presented information. In its discretion, Treasury may schedule a date, time and place for an oral presentation by the insurer(s).

(c) An insurer or insurers must provide all relevant facts and circumstances concerning the relationship(s) between or among the affected insurers and the control factors in § 50.5(c)(4)(i) through (iv); and must explain in detail any basis for why the insurer believes that no controlling influence exists (if a presumption is being rebutted) in light of the particular facts and circumstances, as well as the Act’s language, structure and purpose. Any confidential business or trade secret information submitted to Treasury should be clearly marked. Treasury will handle any subsequent request for information designated by an insurer as confidential business or trade secret information in accordance with Treasury’s Freedom of Information Act regulations at 31 C.F.R. Part 1.

(d) Treasury will review and consider the insurer submission and other relevant facts and circumstances. Unless otherwise extended by Treasury, within 60 days after receipt of a complete submission, including any additional information requested by Treasury, and including any oral presentation, Treasury will issue a final determination of whether one insurer has a controlling influence over another insurer for purposes of the Program. The determination shall set forth Treasury’s basis for its determination.

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(e) This § 50.8 supersedes the Interim Guidance issued by Treasury in a notice published on March 27, 2003 (68 FR 15039).

(Approved by the Office of Management & Budget under control number 1505-0190)

[68 FR 41266, July 11, 2003]

### § 50.9 Procedure for requesting general interpretations of statute.

Persons actually or potentially affected by the Act or regulations in this Part may request an interpretation of the Act or regulations by writing to the Terrorism Risk Insurance Program Office, Suite 2110, Department of the Treasury, 1425 New York Ave NW, Washington, DC 20220, giving a detailed explanation of the facts and circumstances and the reason why an interpretation is needed. A requester should segregate and mark any confidential business or trade secret information clearly. Treasury in its discretion will provide written responses to requests for interpretation. Treasury reserves the right to decline to provide a response in any case. Except in the case of any confidential business or trade secret information, Treasury will make written requests for interpretations and responses publicly available at the Treasury Department Library, on the Treasury Web site, or through other means as soon as practicable after the response has been provided. Treasury will handle any subsequent request for information that had been designated by a requester as confidential business or trade secret information in accordance with Treasury's Freedom of Information Act regulations at 31 CFR Part 1.

[68 FR 41266, July 11, 2003]

## Subpart B—Disclosures as Conditions for Federal Payment

SOURCE: 68 FR 19306, Apr. 18, 2003, unless otherwise noted.

### § 50.10 General disclosure requirements.

(a) *All policies.* As a condition for federal payments under section 103(b) of the Act, the Act requires that an insurer provide clear and conspicuous disclosure to the policyholder of:

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(1) The premium charged for insured losses covered by the Program; and

(2) The federal share of compensation for insured losses under the Program.

(b) *Policies in force on the date of enactment.* For policies issued before November 26, 2002, the disclosure required by the Act must be provided within 90 days of November 26, 2002 (no later than February 24, 2003).

(c) *Policies issued within 90 days of the date of enactment.* For policies issued within the 90-day period beginning on November 26, 2002 through February 24, 2003, the disclosure required by the Act must be provided at the time of offer, purchase, and renewal of the policy.

(d) *Policies issued more than 90 days after the date of enactment.* For policies issued on or after February 25, 2003, the disclosure required by the Act must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy.

### § 50.11 Definition.

Except as provided in § 50.18, for purposes of this subpart the term “disclosure” or “disclosures” refers to the disclosures described in section 103(b)(2) of the Act and § 50.10.

### § 50.12 Clear and conspicuous disclosure.

(a) *General.* Whether a disclosure is clear and conspicuous depends on the totality of the facts and circumstances of the disclosure. See § 50.17 for model forms.

(b) *Description of premium.* An insurer may describe the premium charged for insured losses covered by the Program as a portion or percentage of an annual premium, if consistent with standard business practice. An insurer may not describe the premium in a manner that is misleading in the context of the Program, such as by characterizing the premium as a “surcharge.”

(c) *Method of disclosure.* An insurer may provide disclosures using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.

(d) *Use of producer.* If an insurer normally communicates with a policyholder through an insurance producer or other intermediary, an insurer may

provide disclosures through such producer or other intermediary. If an insurer elects to make the disclosures through an insurance producer or other intermediary, the insurer remains responsible for ensuring that the disclosures are provided by the insurance producer or other intermediary to policyholders in accordance with the Act.

(e) *Demonstration of compliance.* An insurer may demonstrate that it has satisfied the requirement to provide clear and conspicuous disclosure as described in § 50.10 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

(f) *Certification of compliance.* An insurer must certify that it has complied with the requirement to provide disclosure to the policyholder on all policies that form the basis for any claim that is submitted by an insurer for federal payment under the Program.

[68 FR 19306, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003]

#### § 50.13 Offer, purchase, and renewal.

An insurer is deemed to be in compliance with the requirement of providing disclosure “at the time of offer, purchase, and renewal of the policy” under § 50.10(c) and (d) if the insurer:

(a) Makes the disclosure no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder; and

(b) Makes clear and conspicuous reference back to that disclosure, as well as the final terms of terrorism insurance coverage, at the time the transaction is completed.

#### § 50.14 Separate line item.

An insurer is deemed to be in compliance with the requirement of providing disclosure on a “separate line item in the policy” under § 50.10(d) if the insurer makes the disclosure:

(a) On the declarations page of the policy;

(b) Elsewhere within the policy itself; or

(c) In any rider or endorsement, or other document that is made a part of the policy.

[68 FR 59727, Oct. 17, 2003]

#### § 50.17 Use of model forms.

(a) *Policies in force on the date of enactment.* (1) An insurer that is required to make the disclosure under § 50.10(b) and that makes no change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 2.

(2) An insurer that is required to make the disclosure under § 50.10(b) and that makes a change in the existing premium, is deemed to be in compliance with the disclosure requirement if it uses NAIC Model Disclosure Form No. 1. Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the disclosure requirement of section 105(c) of the Act. See § 50.18.

(b) *Policies issued within 90 days of the date of enactment.* An insurer that is required to make the disclosure under § 50.10(c) is deemed to be in compliance with the disclosure requirement if it uses either NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, as long as the form used is modified as appropriate for the particular policy.

(c) *Policies issued more than 90 days after the date of enactment.* An insurer that is required to make the disclosure under § 50.10(d) may continue to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 if appropriate, or other disclosures that meet the requirements of §§ 50.10(a) and 50.14 may be developed.

(d) *Not exclusive means of compliance.* An insurer is not required to use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the disclosure requirement. An insurer may use other means to comply with the disclosure requirement, as long as the disclosure comports with the requirements of the Act.

(e) *Definitions.* For purposes of this section, references to NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 refer to such forms as were in existence on April 18, 2003. These forms may be found on the Treasury Web site at <http://www.treasury.gov/trip>.

## § 50.18

### § 50.18 Disclosure required by reinstatement provision.

(a) *Nullification of terrorism exclusion.* Any terrorism exclusion in a contract for property and casualty insurance that was in force on November 26, 2002, is void to the extent it excludes losses that would otherwise be insured losses.

(b) *Reinstatement of terrorism exclusion.* Notwithstanding paragraph (a) of this section, an insurer may reinstate a preexisting provision in a contract for property and casualty insurance that was in force on November 26, 2002, and that excludes coverage for an act of terrorism only if:

(1) The insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or

(2) The insurer provided notice at least 30 days before any such reinstatement of the increased premium for such terrorism coverage and the rights of the insured with respect to such coverage, including the date upon which the exclusion would be reinstated if no payment is received, and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

[68 FR 19306, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003]

### § 50.19 General 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.

(b) *Residual Market Mechanism Disclosure.* A State residual market insurance entity or State workers' compensation fund may provide the disclosures required by this subpart B to policyholders using normal business prac-

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tices, including forms and methods of communication used to communicate similar policyholder information to policyholders. The disclosures may be made by the State residual market insurance entity or State workers' compensation fund itself, the individual insurers that participate in the State residual market insurance entity or a State workers' compensation fund, or its servicing carriers. The ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer filing a claim under the Program.

(c) *Other requirements.* Except as provided in this section, all other disclosure requirements set out in this subpart B apply to State residual insurance market entities and State workers' compensation funds.

(d) *Prior safe harbor superseded.* This section supersedes the disclosure safe harbor provisions found at paragraph C.4 of the Interim Guidance issued by Treasury in a notice published on December 18, 2002, and published at 67 FR 78864 (December 26, 2002).

[68 FR 59719, Oct. 17, 2003]

## Subpart C—Mandatory Availability

SOURCE: 68 FR 19307, Apr. 18, 2003, unless otherwise noted.

### § 50.20 General mandatory availability requirements.

(a) *Transition Period and Program Years 1 and 2—period ending December 31, 2004.* Under section 103(c) of the Act (unless the time is extended by the Secretary as provided in that section) during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), an insurer must:

(1) Make available, in all of its property and casualty insurance policies, coverage for insured losses; and

(2) Make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

(b) *Program Year 3—calendar year 2005.*  
[Reserved]

**§ 50.21 Make available.**

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and if the requirement is extended by the Secretary, to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

(b) *Changes negotiated subsequent to initial offer.* If an insurer satisfies the requirement to “make available” coverage as described in § 50.20 by first making an offer with coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, which the policyholder declines, the insurer may negotiate with the policyholder an option of partial coverage for insured losses at a lower amount of coverage if permitted by any applicable State law. An insurer is not required by the Act to offer partial coverage if the policyholder declines full coverage. See § 50.24.

(c) *Demonstration of compliance.* If an insurer makes an offer of insurance but no contract of insurance is concluded, the insurer may demonstrate that it has satisfied the requirement to make available coverage as described in § 50.20 through use of appropriate systems and normal business practices that demonstrate a practice of compliance.

[68 FR 19307, Apr. 18, 2003, as amended at 68 FR 59727, Oct. 17, 2003]

**§ 50.23 No material difference from other coverage.**

(a) *Terms, amounts, and other coverage limitations.* As provided in § 50.20(a)(2), an insurer must offer coverage for insured losses resulting from an act of

terrorism that does not differ materially from the terms, amounts, and other coverage limitations (including deductibles) applicable to losses from other perils. For purposes of this requirement, “terms” excludes price.

(b) *Limitations on types of risk.* If an insurer does not cover all types of risks, then it is not required to cover the excluded risks in satisfying the requirement to make available coverage for losses resulting from an act of terrorism that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. For example, if an insurer does not cover all types of risks, either because the insurer is outside of direct State regulatory oversight, or because a State permits certain exclusions for certain types of losses, such as nuclear, biological, or chemical events, then the insurer is not required to make such coverage available.

**§ 50.24 Applicability of State law requirements.**

(a) *General.* After satisfying the requirement to make available coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism, if coverage is rejected an insurer may then offer coverage that is on different terms, amounts, or coverage limitations, as long as such an offer does not violate any applicable State law requirements.

(b) *Examples.* (1) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State has a requirement that an insurer offer full coverage without any exclusion, then the requirement would continue to apply and the insurer may not subsequently offer less than full coverage or coverage with exclusions.

(2) If an insurer subject to State regulation first makes available coverage in accordance with § 50.20 and the State permits certain exclusions or allows for

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other limitations, or an insurance policy is not governed by State law requirements, then the insurer may subsequently offer limited coverage or coverage with exclusions.

## Subpart D—State Residual Market Insurance Entities; Workers' Compensation Funds

### § 50.30 General participation requirements.

(a) *Insurers.* As defined in § 50.5(f), all State residual market insurance entities and State workers' compensation funds are insurers under the Program even if such entities do not receive direct earned premiums.

(b) *Mandatory Participation.* State residual market insurance entities and State workers' compensation funds that meet the requirements of § 50.5(f) are mandatory participants in the Program subject to the rules issued in this Subpart.

(c) *Identification.* Treasury will release and maintain a list of State residual market insurance entities and State workers' compensation funds at [www.treasury.gov/trip](http://www.treasury.gov/trip). Procedures for providing comments and updates to that list will be posted with the list.

[68 FR 59720, Oct. 17, 2003]

### § 50.33 Entities that do not share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that does not share profits and losses with a private sector insurer is deemed to be a separate insurer under the Program.

(b) *Premium calculation.* A State residual market insurance entity or a State workers' compensation fund that is deemed to be a separate insurer should follow the guidelines specified in § 50.5(d)(1) or 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium.

[68 FR 59720, Oct. 17, 2003]

### § 50.35 Entities that share profits and losses with private sector insurers.

(a) *Treatment.* A State residual market insurance entity or a State workers' compensation fund that shares

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profits and losses with a private sector insurer is not deemed to be a separate insurer under the Program.

(b) *Premium and loss calculation.* A State residual market insurance entity or a State workers' compensation fund that is not deemed to be a separate insurer should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which shall then be included respectively in the participant insurer's direct earned premium or insured loss calculations.

[68 FR 59720, Oct. 17, 2003]

### § 50.36 Allocation of premium income associated with entities that do share profits and losses with private sector insurers.

(a) *Servicing Carriers.* For purposes of this Subpart, a servicing carrier is an insurer that enters into an agreement to place and service insurance contracts for a State residual market insurance entity or a State workers' compensation fund and to cede premiums associated with such insurance contracts to the State residual market insurance entity or State workers' compensation fund. Premiums written by a servicing carrier on behalf of a State residual market insurance entity or State workers' compensation fund that are ceded to such an entity or fund shall not be included as direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the servicing carrier.

(b) *Participant Insurers.* For purposes of this Subpart, a participant insurer is an insurer that shares in the profits and losses of a State residual market insurance entity or a State workers' compensation fund. Premium income that is distributed to or assumed by participant insurers in a State residual market insurance entity or State workers' compensation fund (whether directly or as quota share insurers of risks written by servicing carriers),

shall be included in direct earned premium (as described in § 50.5(d)(1) or 50.5(d)(2)) of the participant insurer.

[68 FR 59720, Oct. 17, 2003]

### Subpart E—Self-Insurance Arrangements; Captives [Reserved]

### Subpart F—Claims Procedures

SOURCE: 69 FR 39307, June 29, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 39307, June 29, 2004, subpart F was added, effective July 29, 2004.

#### § 50.50 Federal share of compensation.

(a) *General.* The Treasury will pay the Federal share of compensation for insured losses as provided in section 103 of the Act once a Certification of Loss required by § 50.53 is deemed sufficient. Subject to paragraph (b) of this section, Treasury shall pay the appropriate amount of the Federal share of compensation upon a determination that:

(1) The insurer is an entity, including an affiliate thereof, that meets the requirements of § 50.5(f);

(2) The insurer's insured losses as defined in § 50.5(e), including the allocated dollar value of the insurer's proportionate share of insured losses from a State residual market insurance entity or State workers' compensation fund as described in § 50.35, have exceeded its insurer deductible as defined in § 50.5(g);

(3) The insurer has paid or is prepared to pay an underlying insured loss, based on a filed claim for the insured loss;

(4) Neither the insurer's claim for Federal payment nor any underlying claim for an insured loss is fraudulent, collusive, made in bad faith, dishonest or otherwise designed to circumvent the purposes of the Act and regulations;

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19;

(6) The insurer took all steps reasonably necessary to properly and carefully investigate the underlying insured loss and otherwise processed the

underlying insured loss using appropriate insurance business practices;

(7) The insured losses submitted for payment are within the scope of coverage issued by the insurer under the terms and conditions of the policies for commercial property and casualty insurance as defined in § 50.5(l); and

(8) The procedures specified in this Subpart have been followed and all conditions to payment have been met.

(b) *Adjustments.* Treasury may subsequently adjust, including requiring repayment of, any payment made under paragraph (a) of this section in accordance with its authority under the Act.

(c) *Suspension of payment for other insured losses.* Upon a determination by Treasury that an insurer has failed to meet any of the requirements for payment specified in paragraph (a) of this section for a particular insured loss, Treasury may suspend payment of the Federal share of compensation for all other insured losses of the insurer pending investigation and audit of the insurer's insured losses.

(d) *Amount payable.* The Federal share of compensation under the Program shall be 90 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during a Program Year, subject to any adjustments in § 50.51 and the cap of \$100 billion as provided in section 103(e)(2) of the Act.

#### § 50.51 Adjustments to the Federal share of compensation.

(a) *Aggregate amount of insured losses.* The aggregate amount of insured losses of an insurer in a Program Year used to calculate the Federal share of compensation shall be reduced by any amounts recovered by the insurer as salvage or subrogation for its insured losses in the Program Year.

(b) *Amount of Federal share of compensation.* The Federal share of compensation shall be adjusted as follows:

(1) *No excess recoveries.* For any Program Year, the sum of the Federal share of compensation paid by Treasury to an insurer and the insurer's recoveries for insured losses from other sources shall not be greater than the insurer's aggregate amount of insured

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losses for acts of terrorism in that Program Year. Amounts recovered for insured losses in excess of an insurer's aggregate amount of insured losses in a Program Year shall be repaid to Treasury within 45 days after the end of the month in which total recoveries of the insurer, from all sources, become excess. For purposes of this paragraph, amounts recovered from a reinsurer pursuant to an agreement whereby the reinsurer's right to any excess recovery has priority over the rights of Treasury shall not be considered a recovery subject to repayment to Treasury.

(2) *Reduction of amount payable.* The Federal share of compensation for insured losses under the Program shall be reduced by the amount of other compensation provided by other Federal programs to an insured or a third party to the extent such other compensation duplicates the insurance indemnification for those insured losses.

(i) *Other Federal program compensation.* For purposes of this section, compensation provided by other Federal programs for insured losses means compensation that is provided by Federal programs established for the purpose of compensating persons for losses in the event of emergencies, disasters, acts of terrorism, or similar events. Compensation provided by Federal programs for insured losses excludes benefit or entitlement payments, such as those made under the Social Security Act, under laws administered by the Secretary of Veteran Affairs, railroad retirement benefit payments, and other similar types of benefit payments.

(ii) *Insurer due diligence.* Each insurer shall inquire of each of its policyholders, insureds, and claimants whether the person receiving insurance proceeds for an insured loss has received, expects to receive, or is entitled to receive compensation from another Federal program for the insured loss, and if so, the source and the amount of the compensation received or expected. The response, source, and such amounts shall be reported with each underlying claim on the bordereau specified in § 50.53(b)(1).

### § 50.52 Initial Notice of Insured Loss.

Each insurer shall submit to Treasury an Initial Notice of Insured Loss,

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on a form prescribed by Treasury, whenever the insurer's aggregate insured losses (including reserves for "incurred but not reported" losses) within a Program Year exceed an amount equal to 50 percent of the insurer's deductible as specified in § 50.5(g). Insurers are advised the form for the Initial Notice of Insured Loss will include an initial estimate of aggregate losses for the Program Year, the amount of the insurer deductible and an estimate of the Federal share of compensation for the insurer's aggregate insured losses. In the case of an affiliated group of insurers, the form for the Initial Notice of Insured Loss will include the name and address of a single designated insurer within the affiliated group that will serve as the single point of contact for the purpose of providing loss and compliance certifications as required in § 50.53 and for receiving, disbursing, and distributing payments of the Federal share of compensation in accordance with § 50.54. An insurer, at its option, may elect to include with its Initial Notice of Insured Loss the certification of direct earned premium required by § 50.53(b)(3).

### § 50.53 Loss certifications.

(a) *General.* When an insurer has paid aggregate insured losses that exceed its insurer deductible, the insurer may make claim upon Treasury for the payment of the Federal share of compensation for its insured losses. The insurer shall file an Initial Certification of Loss, on a form prescribed by Treasury, and thereafter such Supplementary Certifications of Loss, on a form prescribed by Treasury, as may be necessary to receive payment for the Federal share of compensation for its insured losses.

(b) *Initial Certification of Loss.* An insurer shall use its best efforts to file with the Program the Initial Certification of Loss within 45 days following the last calendar day of the month when an insurer has paid aggregate insured losses that exceed its insurer deductible. The Initial Certification of Loss will include the following:

(1) A bordereau, on a form prescribed by Treasury, that includes basic information about each underlying insured loss. For purposes of this section, a

“bordereau” is a report of basic information about an insurer’s underlying claims that, in the aggregate, constitute the insured losses of the insurer. The bordereau will include, but may not be limited to:

(i) A listing of each underlying insured loss by catastrophe code and line of business;

(ii) The total amount of reinsurance recovered from other sources;

(iii) A calculation of the aggregate insured losses sustained by the insurer above its insurer deductible for the Program Year; and

(iv) The amount the insurer claims as the Federal share of compensation for its aggregate insured losses.

(2) A certification that the insurer is in compliance with the provisions of section 103(b) of the Act and this part, including certifications that:

(i) The underlying insured losses listed on the bordereau filed pursuant to § 50.53(b)(1) either: Have been paid by the insurer; or will be paid by the insurer upon receipt of an advance payment of the Federal share of compensation as soon as possible, consistent with the insurer’s normal business practices, but not longer than five business days after receipt of the Federal share of compensation;

(ii) The underlying claims for insured losses were filed by persons who suffered an insured loss, or by persons acting on behalf of such persons;

(iii) The underlying claims for insured losses were processed in accordance with appropriate business practices and the procedures specified in this subpart;

(iv) The insurer has complied with the disclosure requirements of §§ 50.10 through 50.19 for each underlying insured loss that is included in the amount of the insurer’s aggregate insured losses; and

(v) The insurer has complied with the mandatory availability requirements of §§ 50.20 through 50.24.

(3) A certification of the amount of the insurer’s “direct earned premium” as defined in § 50.5(d), together with the calculation of its “insurer deductible” as defined in § 50.5(g) (provided this certification was not submitted previously with the Initial Notice of Insured Loss specified in § 50.52).

(4) A certification that the insurer will disburse payment of the Federal share of compensation in accordance with this subpart.

(c) *Supplementary Certification of Loss.* If the total amount of the Federal share of compensation due an insurer for insured losses under the Act has not been determined at the time an Initial Certification of Loss has been filed, the insurer shall file monthly, or on a schedule otherwise determined by Treasury, Supplementary Certifications of Loss updating the amount of the Federal share of compensation owed for the insurer’s insured losses. Supplementary Certifications of Loss will include the following:

(1) A bordereau described in § 50.53(b)(1); and

(2) A certification as described in § 50.53(b)(2).

(d) *Supplementary information.* In addition to the information required in paragraphs (b) and (c) of this section, Treasury may require such additional supporting documentation as required to ascertain the Federal share of compensation for the insured losses of any insurer.

(e) *State Residual Market Insurance Entities and State Workers’ Compensation Funds.* A State residual market insurance entity or State workers’ compensation fund described in § 50.35 shall provide the Certifications of Loss described in §§ 50.53(b) and 50.53(c) for all its insured losses to each participating insurer at the time it provides the allocated dollar value of the participating insurer’s proportionate share of insured losses. In addition, at such time the State residual market insurance entity or State workers’ compensation fund shall provide the certification described in § 50.53(b)(2) to Treasury. Participating insurers shall treat the allocated dollar value of their proportionate share of insured losses from a State residual market insurance entity or State workers’ compensation fund as an insured loss for the purpose of their own reporting to Treasury in seeking the Federal share of compensation.

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### § 50.54 Payment of Federal share of compensation.

(a) *Timing.* Treasury will promptly pay to an insurer the Federal share of compensation due the insurer for its insured losses. Payment shall be made in such installments and on such conditions as determined by the Treasury to be appropriate. Any overpayments by Treasury of the Federal share of compensation will be offset from future payments to the insurer or returned to Treasury within 45 days.

(b) *Payment process.* Payment of the Federal share of compensation for insured losses will be made to the insurer designated on the Initial Notice of Loss required by § 50.52. An insurer that requests payment of the Federal share of compensation for insured losses must receive payment through electronic funds transfer. The insurer must establish either an account for reimbursement as described in paragraph (c) of this section (if the insurer only seeks reimbursement) or a segregated account as described in paragraph (d) of this section (if the insurer seeks advance payments or a combination of advance payments and reimbursement). Applicable procedures will be posted at [www.treasury.gov/trip](http://www.treasury.gov/trip) or otherwise will be made publicly available.

(c) *Account for reimbursement.* An insurer shall designate an account for the receipt of reimbursement of the Federal share of compensation at an institution eligible to receive payments through the Automated Clearing House (ACH) network.

(d) *Segregated account for advance payments.* An insurer that seeks advance payments of the Federal share of compensation as certified according to § 50.53(b)(2)(i)(B) shall establish an interest-bearing segregated account into which Treasury will make advance payments as well as reimbursements to the insurer.

(1) *Definition of segregated account.* For purposes of this section, a segregated account is an interest-bearing separate account established by an insurer at a financial institution eligible to receive payments through the ACH network. Such an account is limited to the purposes of:

(i) Receiving payments of the Federal share of compensation;

(ii) Disbursing payments to insureds and claimants; and

(iii) Transferring payments to the insurer or affiliated insurers for insured losses reported on the bordereau as already paid.

(2) *Remittance of interest.* All interest earned on advance payments in the segregated account must be remitted at least quarterly to Treasury's Office of Financial Management or as otherwise prescribed in applicable procedures.

(e) *Denial or withholding of advance payment.* Treasury may deny or withhold advance payments of the Federal share of compensation to an insurer if Treasury determines that the insurer has not properly disbursed previous advances of the Federal share of compensation or otherwise has not complied with the requirements for advance payment as provided in this subpart.

(f) *Affiliated group.* In the case of an affiliated group of insurers, Treasury will make payment of the Federal share of compensation for the insured losses of the affiliated group to the insurer designated in the Initial Notice of Insured Loss to receive payment on behalf of the affiliated group. The designated insurer receiving payment from Treasury must distribute payment to affiliated insurers in a manner that ensures that each insurer in the affiliated group is compensated for its share of insured losses, taking into account a reasonable and fair allocation of the group deductible among affiliated insurers. Upon payment of the Federal share of compensation to the designated insurer, Treasury's payment obligation to the insurers in the affiliated group with respect to any insured losses covered on the applicable bordereau is discharged to the extent of the payment.

### Subpart G—Audit and Investigative Procedures

SOURCE: 69 FR 39307, June 29, 2004, unless otherwise noted.

EFFECTIVE DATE NOTE: At 69 FR 39307, June 29, 2004, subpart G was added, effective July 29, 2004.

**Office of the Secretary of the Treasury**

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**§ 50.60 Audit authority.**

The Secretary of the Treasury, or an authorized representative, shall have, upon reasonable notice, access to all books, documents, papers and records of an insurer that are pertinent to amounts paid to the insurer as the Federal share of compensation for insured losses for the purpose of investigation, confirmation, audit and examination.

**§ 50.61 Recordkeeping.**

Each insurer that seeks payment of a Federal share of compensation under subpart F of this part shall retain such records as are necessary to fully disclose all material matters pertinent to insured losses and the Federal share of compensation sought under the Program, including, but not limited to, records regarding premiums and in-

sured losses for all commercial property and casualty insurance issued by the insurer and information relating to any adjustment in the amount of the Federal share of compensation payable. Insurers shall maintain detailed records for not less than 5 years from the termination dates of all reinsurance agreements involving commercial property and casualty insurance subject to the Act. Records relating to premiums shall be retained and available for review for not less than 3 years following the conclusion of the policy year. Records relating to underlying claims shall be retained for not less than 5 years following the final adjustment of the claim.

**Subpart H—Recoupment and Surcharge Procedures [Reserved]**