DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AB93

Terrorism Risk Insurance Program; Terrorism Risk Insurance Program Reauthorization Act Implementation

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of amendments made by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Reauthorization Act) to Title I of the Terrorism Risk Insurance Act of 2002 (TRIA, or Act), as previously amended by the Terrorism Risk Insurance Extension Act of 2005 (Extension Act). The Act established a temporary Terrorism Risk Insurance Program (Program) that was scheduled to expire on December 31, 2005, under which the Federal Government shared the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers. The Extension Act extended the Program through December 31, 2007, and made other changes. The Reauthorization Act extended the Program through December 31, 2014, revised the definition of an ''act of terrorism,'' and made other changes. This final rule contains regulations that Treasury is issuing to implement certain aspects of the Reauthorization Act. In particular, the rule addresses mandatory availability (''make available'') and disclosure requirements. An interim final rule with request for comments was published in the **Federal Register** on September 16, 2008, and generally incorporated the substance of interim guidance previously issued by Treasury and published in the **Federal Register**. Since no comments were received regarding the interim final rule, this final rule adopts the text of the interim final rule without revision.

DATES: This final rule is effective May 21, 2009.

FOR FURTHER INFORMATION CONTACT: Howard Leikin, Deputy Director, Terrorism Risk Insurance Program (202) 622–6770 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

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 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 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.

Each entity that meets the Act's definition of insurer must participate in the Program. The amount of Federal payment for an insured loss resulting from an act of terrorism is determined by insurance company deductibles and excess loss sharing with the Federal Government as specified in the Act and Treasury's implementing regulations. An insurer's deductible is calculated based on the value of direct earned premiums collected over certain prescribed calendar periods. Once an insurer has met its individual deductible, the Federal payments cover a percentage of the insured losses above the deductible, all subject to an annual industry aggregate limit of $100 billion.

The Act gives Treasury authority to recoup Federal payments made under the Program through policyholder surcharges. 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 certain 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.

The Program was originally set to expire on December 31, 2005. On December 22, 2005, the President signed into law the Terrorism Risk Insurance Extension Act of 2005 (Pub. L. 109–144, 119 Stat. 2660), which extended the Program through December 31, 2007, and made other significant changes to TRIA that included a revised definition of property and casualty insurance and creation of a new Program trigger that prohibits payment of Federal compensation by Treasury unless the aggregate industry insured losses resulting from a certified act of terrorism exceed a certain amount ($100 million in 2007 and any Program Year thereafter).

B. Terrorism Risk Insurance Program Reauthorization Act of 2007

Under the Extension Act, the Program was set to expire on December 31, 2007. On December 26, 2007, the President signed into law the Terrorism Risk Insurance Program Reauthorization Act of 2007 (Pub. L. 110–160, 121 Stat. 1839), which extended the Program through December 31, 2014 (*i.e.,* added additional Program Years to the Program). Other provisions of the Reauthorization Act:

- Revise the definition of ''act of terrorism'' to remove the requirement that the act of terrorism be committed by an individual acting on behalf of any foreign person or foreign interest in order to be certified as an act of terrorism for purposes of the Act.
- Define ''insurer deductible'' for all additional Program Years as the value of an insurer's direct earned premiums for commercial property and casualty insurance for the immediately preceding calendar year multiplied by 20 percent.
- Set the Federal share of compensation for insured losses (subject to a $100,000,000 Program trigger) for all additional Program Years at 85 percent of that portion of the amount of insured losses that exceeds the applicable insurer deductible.
- Require Treasury to submit a report to Congress and issue final regulations for determining the *pro rata* share of insured losses to be paid under the Program when aggregate insured losses exceed $100,000,000,000.
- Require the Secretary of the Treasury to notify Congress not later than 15 days after the date of an act of terrorism as to whether aggregate insured losses are estimated to exceed $100,000,000,000.
- Require for policies issued after the date of enactment, that insurers provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap at the time of offer, purchase, and renewal of a policy (in addition to current disclosure requirements).
- Revise the recoupment provisions of the Act. For purposes of recouping the Federal share of compensation under the Act, the ''insurance marketplace aggregate retention

amount'' for all additional Program Years is the lesser of $27,500,000,000 and the aggregate amount, for all insurers, of insured losses during each Program Year. With regard to mandatory recoupment of the Federal share of compensation through policyholder surcharges, collection is required within a certain schedule specified in the Reauthorization Act. The limitation that surcharges not exceed 3 percent of the premium charged for property and casualty insurance coverage under the policy is eliminated (but remains in the case of discretionary recoupment).

- Require Treasury to issue recoupment regulations within 180 days of enactment, and publish an estimate of aggregate insured losses within 90 days after an act of terrorism.
- Require the President's Working Group on Financial Markets to perform an ongoing analysis regarding the long-term availability and affordability of terrorism risk insurance and submit reports in 2010 and 2013.
- Require the Comptroller General to examine and report on the availability and affordability of insurance coverage for nuclear, biological, chemical, and radiological terrorist events; the future outlook for such coverage; and the capacity of insurers and State workers compensation funds to manage the risk associated with nuclear, biological, chemical, and radiological terrorist events.
- Require the Comptroller General to study and report on the question of whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism risk insurance available.

C. The Interim Final Rule

The interim final rule was published in the **Federal Register** at 73 FR 53359 (September 16, 2008). It incorporated certain changes to 31 CFR Part 50 required by the amendments to TRIA in the Reauthorization Act. The rule included various conforming changes, such as a change to the definition of ''act of terrorism,'' and extension of applicable insurer deductible amounts and the Federal share of compensation for insured losses for additional Program Years.

This final rule, and the preceding interim final rule, reflect interim guidance previously issued by Treasury in a notice published in the **Federal Register** on January 29, 2008 (73 FR 5264), in order to assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Reauthorization Act. Treasury consulted with the National Association of Insurance Commissioners (NAIC) in developing the interim final rule. No comments were submitted on the interim final rule and therefore, Treasury is finalizing that rule by adopting the text without change.

II. Analysis of the Final Rule

The following briefly describes the content of the final rule. For a more detailed discussion, please refer to the interim final rule publication of September 16, 2008.

A. Definitions (§ 50.5)

The final rule incorporates revised definitions for the terms ''act of terrorism,'' ''Program Years,'' ''insurer deductible,'' and ''Program Trigger event.''

To conform to the Reauthorization Act, the definition of ''act of terrorism'' in § 50.5(b)(1)(iv) is revised to remove the requirement that the act be committed by an individual ''acting on behalf of any foreign person or foreign interest'' in order to be certified as an act of terrorism for purposes of TRIA.

The revisions to the definitions of ''Program Years,'' ''insurer deductible,'' and ''Program Trigger event'' merely conform these definitions to the changes in the Reauthorization Act.

B. Interim Guidance Safe Harbors (§ 50.7)

Section 50.7 of the final rule adds the Interim Guidance issued by Treasury on January 22, 2008, and published at 73 FR 5264 (January 29, 2008) to the list of Interim Guidance documents Treasury has issued.

C. Disclosure (§ 50.12)

The Reauthorization Act made no change to the requirement in section 103(b) of TRIA that insurers provide clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. However, because an ''insured loss'' is defined, in part, as a loss resulting from an act of terrorism, the revision of the definition of an act of terrorism to eliminate the ''foreign person or interest'' element (*i.e.,* to add what is often referred to as ''domestic terrorism'') may affect the premium charged for insured losses and an insurer's compliance with the disclosure requirements.

Section 50.12(b)(2) of the final rule states that if an insurer makes an initial offer of coverage, or offers to renew an existing policy on or after December 26, 2007, the disclosure provided to the policyholder must reflect the premium charged for insured losses covered by the Program consistent with the definition of an act of terrorism as amended by the Reauthorization Act. As a general matter, the requirement to make available coverage for insured losses must be met according to the provisions of the Act in effect at the time the offer is made. The disclosure must be consistent with the offer that is made.

Section 50.12(e)(3) of the final rule provides that if an insurer made available coverage for insured losses in a new policy or policy renewal in 2007 or in the first three months of 2008 for coverage becoming effective in 2008, but did not provide a disclosure at the time of offer, purchase or renewal of the policy, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided a disclosure as soon as possible following January 1, 2008. Treasury considers March 31, 2008, to be the latest reasonable date for compliant disclosures to policyholders, barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

D. Cap Disclosure (§§ 50.15 and 50.11)

Section 103(e)(2) of TRIA provides that if aggregate insured losses exceed $100,000,000,000 during any Program Year, Treasury shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000, and no insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds $100,000,000,000. Section 103(b)(3) of TRIA, as amended by the Reauthorization Act, requires an insurer to provide a clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The requirement applies to ''any policy that is issued after the date of enactment'' of the Reauthorization Act, or December 26, 2007. The disclosure must be made at the time of offer, purchase, and renewal of the policy.

New section 50.15 in the final rule addresses these requirements. Section 50.11 also includes a minor change to clarify that the term ''cap disclosure'' in the regulations refers to this disclosure required by section 103(b)(3) of the Act.

For policies issued after December 26, 2007, this cap disclosure must initially be provided to the policyholder at the

first occurrence thereafter of an offer, purchase or renewal. The final rule provides that, for policies issued after December 26, 2007, if an insurer does not provide a cap disclosure by the time of the first offer, purchase or renewal of the policy after December 26, 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided the disclosure as soon as possible following December 26, 2007. Treasury considers March 31, 2008, to be the latest reasonable date for providing the cap disclosure (including reprocessing of policies, if necessary, where a compliant disclosure was not possible), barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

E. Use of Model Forms (§ 50.17)

Section 50.17(e) of the final rule adds a provision specifically addressing the cap disclosure. In addition, a minor refinement of section 50.17(a)(2) has been made in order to more accurately reflect section 105(c) of the Act.

On December 19, 2007, the NAIC modified Model Disclosure Forms No. 1 and 2 to satisfy the disclosure requirements of section 103(b) of the Act, including the cap disclosure requirement under section 103(b)(3). The new forms are found on the Treasury Web site at *http://www.treasury.gov/trip.* However, insurers are not required to use the NAIC forms, and may use other means to comply with the disclosure requirements.

F. Make Available (§§ 50.20 and 50.21)

The Reauthorization Act made no change to the TRIA ''make available'' requirements in section 103(c). However, because the ''make available'' requirements apply to insured losses, and an ''insured loss'' is defined, in part, as a loss resulting from an act of terrorism, the revision of the definition of an act of terrorism in the Reauthorization Act to add domestic terrorism may have an impact on an insurer's compliance with the ''make available'' requirements.

The Reauthorization Act was effective immediately upon enactment, December 26, 2007. The TRIA regulations in 31 CFR 50.21(a) generally provide that the ''make available'' requirements apply at the time of the initial offer of coverage or offer of renewal of an existing policy. Thus, any initial offers of coverage or offers of renewal of existing policies, made on or after the date of enactment, must be consistent with the revised definition of act of terrorism. In addition, if an insurer makes an offer of coverage on or after December 26, 2007 on a policy that is in mid term, then the insurer must make available coverage for insured losses consistent with the revised definition of an act of terrorism. These general rules are included in revised section 50.21(b) of the final rule.

Section 50.21 addresses in detail insurer implementation of the ''make available'' requirements under various circumstances as a result of enactment of the Reauthorization Act. Treasury considers March 31, 2008, to be the latest reasonable date for compliant offers of coverage (including reprocessing of policies, if necessary, where a compliant post-December 26, 2007 offer was not possible), barring unforeseen or unusual circumstances. If the March 31, 2008, date was not met by an insurer, Treasury will expect the insurer to demonstrate, when submitting a claim for the Federal share of compensation under the Program, why it could not comply by that date.

Section 50.21(c)(2) addresses policies where the coverage for insured losses expired as of December 31, 2007, but other coverage under the policy continued in force in 2008. An insurer must make coverage for insured losses available for the remaining portion of the policy term and, under section 50.21(e)(4), an insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage as soon as possible following January 1, 2008. However, if a policyholder had declined an offer made by an insurer for coverage for insured losses expiring as of December 31, 2007, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed.

Section 50.21(e)(5) addresses situations where coverage became effective in 2008. Section 50.21(e)(5)(i) requires that if an insurer processed a new policy or policy renewal in 2007, or in the first three months of 2008, for coverage becoming effective in 2008, but did not make available coverage for insured losses, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided an offer of coverage for insured losses as soon as possible following January 1, 2008.

Under section 50.21(e)(5)(ii), if an insurer made an initial offer or offer of renewal of coverage for insured losses on or after December 26, 2007, for a policy term becoming effective in 2008, but the scope of the insured losses in the offer was inconsistent with the Reauthorization Act's revised definition of an act of terrorism, then an insurer must make a new offer of coverage as soon as possible following January 1, 2008. If an insurer made an initial offer of coverage or offer of renewal before December 26, 2007, for a policy term becoming effective in 2008, and coverage for insured losses was in compliance with the Act and the definition of an act of terrorism at the time of the offer, then the insurer is not required to make a new offer of coverage before the policy is due to be renewed.

G. Federal Share of Compensation (§§ 50.50 and 50.53)

These sections of the final rule include other minor and conforming changes to reflect the extension of the Program and the inclusion of the cap disclosure.

III. Procedural Requirements

This final rule is not a significant regulatory action under the terms of Executive Order 12866.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule implements changes prescribed or authorized by the Reauthorization Act. TRIA requires all insurers, regardless of size or sophistication, that receive direct earned premiums for any type of commercial property and casualty insurance, to participate in the Program. The Act also defines ''property and casualty insurance'' to mean commercial lines without any reference to the size or scope of the commercial entity. The rule allows all insurers, whether large or small, to use existing systems and business practices to demonstrate compliance. The disclosure and ''make available'' requirements are required by the Act. In addition, the Act now defines an ''act of terrorism'' to include domestic terrorism. Any economic impact associated with the final rule flows from the Act and not the final rule. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a Federal reinsurance-type backstop to commercial property and casualty insurers and spreading the risk of insured losses resulting from an act of terrorism. Accordingly, a regulatory flexibility analysis is not required.

List of Subjects in 31 CFR Part 50

Terrorism risk insurance.

Authority and Issuance

■ For the reasons set forth above, the interim final rule amending 31 CFR Part 50, which was published at 73 FR 53359 on September 16, 2008, is adopted as a final rule without change.

Kenneth E. Carfine,

Acting Under Secretary for Domestic Finance.

[FR Doc. E9–9007 Filed 4–20–09; 8:45 am]

BILLING CODE 4810–25–P?≤

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1045; FRL–8894–1]

Approval and Promulgation of Air Quality Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a site-specific revision to the Minnesota sulfur dioxide (SO_2) State Implementation Plan (SIP) for the Olmsted Waste to Energy Facility (OWEF), located in Rochester, Olmsted County, Minnesota. In its September 28, 2007, submittal, the Minnesota Pollution Control Agency (MPCA) requested that EPA approve certain conditions contained in OWEF's revised Federally enforceable Title V operating permit into the Minnesota SO_2 SIP. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this rulemaking action.

DATES: This direct final rule will be effective June 22, 2009, unless EPA receives adverse comments by May 21, 2009. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2007–1045, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *E-mail: mooney.john@epa.gov.*
3. *Fax:* (312) 886–5824.
4. *Mail:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* John M. Mooney, Chief, Criteria Pollutant Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2007–1045. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or e-mail. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *www.regulations.gov* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. We recommend that you telephone Christos Panos, Environmental Engineer, at (312) 353–8328 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Environmental Engineer, Criteria Pollutant Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328, *panos.christos@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. General Information

1. What is the Background for this Action?

OWEF, a municipal waste combustor facility owned by Olmsted County, is located at 301 Silver Creek Road Northeast, in Rochester, Olmsted County, Minnesota. The facility is a district heating and cooling plant as well as an electric power generating station. Energy is produced mainly through combustion of municipal solid waste in two mass burn combustion units. The other emission units are a diesel generator that provides emergency electrical power and occasional peaking capacity and an auxiliary boiler used when the waste combustor is going through maintenance. Minnesota originally submitted a Title V permit for OWEF as part of the Minnesota SO_2 SIP for Olmsted County on November 4, 1998. This Title V permit contains the SO_2 emission limits and operating restrictions imposed on the facility to provide for attainment and maintenance of the SO_2 National Ambient Air Quality Standards (NAAQS).

2. What information did Minnesota submit, and what were its requests?

The SIP revision submitted by MPCA on September 28, 2007, consists of Minnesota Air Emission Permit No. 10900005–002, issued to OWEF on August 23, 2007, which serves as a joint Title I/Title V document. The state has requested that EPA approve only the portions of the permit cited as ''Title I