provisions. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive order. When applicable, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. This rule is merely technical in nature and imposes no new burdens on small entities. Indeed, the effect of this rule is to remove a requirement that manufacturers package certain iron-containing dietary supplement and drug products in unit-dose packaging. Finally, a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is required only for nonprocedural rules that impose costs of $110 million or more on either the private sector or State, local, and tribal governments in the aggregate. This rule imposes no such costs.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that this final rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by OMB under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Part 111

Dietary foods, Drugs, Foods, Packaging and containers.

21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 111 and 310 are amended as follows:

PART 111—CURRENT GOOD MANUFACTURING PRACTICE FOR DIETARY SUPPLEMENTS

■ 1. The authority citation for 21 CFR part 111 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 371.

PART 111—[REMOVED AND RESERVED]

■ 2. Part 111, consisting of §111.50, is removed and reserved.

PART 310—NEW DRUGS

■ 3. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

■ 4. Section 310.518 is revised to read as follows:

§ 310.518 Drug products containing iron or iron salts.

Drug products containing elemental iron or iron salts as an active ingredient in solid oral dosage form, e.g., tablets or capsules shall meet the following requirements:

(a) *Labeling.* (1) The label of any drug in solid oral dosage form (e.g., tablets or capsules) that contains iron or iron salts for use as an iron source shall bear the following statement:

WARNING: Accidental overdose or iron-containing products is a leading cause of fatal poisoning in children under 6. Keep this product out of reach of children. In case of accidental overdose, call a doctor or poison control center immediately.

(2)(i) The warning statement required by paragraph (a)(1) of this section shall appear prominently and conspicuously on the information panel of the immediate container label.

(ii) If a drug product is packaged in unit-dose packaging, and if the immediate container bears labeling but not a label, the warning statement required by paragraph (a)(1) of this section shall appear prominently and conspicuously on the immediate container labeling in a way that maximizes the likelihood that the warning is intact until all of the dosage units to which it applies are used.

(3) Where the immediate container is not the retail package, the warning statement required by paragraph (a)(1) of this section shall also appear prominently and conspicuously on the information panel of the retail package label.

(4) The warning statement shall appear on any labeling that contains warnings.

(5) The warning statement required by paragraph (a)(1) of this section shall be set off in a box by use of hairlines.

(b) The iron-containing inert tablets supplied in monthly packages of oral contraceptives are categorically exempt from the requirements of paragraph (a) of this section.

Dated: October 7, 2003.

Jeffrey Shuren,

Assistant Commissioner for Policy.

[FR Doc. 03–26188 Filed 10–16–03; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA99

Terrorism Risk Insurance Program; State Residual Market Insurance Entities

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 Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. Treasury published a proposed rule with a request for comment on April 18, 2003. This rule is issued pursuant to section 103(d)(1) of the Act, which directs Treasury to issue regulations that apply the provisions of the Act specifically to State residual market insurance entities and State workers' compensation funds. This rule is the third final rule in a series of regulations that Treasury is issuing to implement the Program.

DATES: This final rule is effective October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney,

Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (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 to allow for a transition period for the private markets to stabilize and build capacity while preserving State insurance regulation and consumer protections.

Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in 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, including the issuance of regulations and procedures. The Program will end on December 31, 2005.

Each entity that meets the definition of ''insurer'' (well over 2000 firms) must participate in the Program. The amount of Federal payment for an insured loss resulting from an act of terrorism is to be determined based upon the insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on the value of ''direct earned premiums'' collected over certain statutory periods. Once an insurer has met its individual deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an industry-aggregate limit of $100 billion.

The Program provides a Federal reinsurance backstop for three years. The Act provides Treasury with authority to recoup Federal payments made under the Program through policyholder surcharges, up to a maximum annual limit. The Act also prohibits duplicative payments for insured losses that have been covered under any other Federal program.

The mandatory availability or ''make available'' provisions in section 103(c) of the Act require that, for Program Year 1 and Program Year 2 and, if so determined by Treasury, in Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage can not differ materially from the terms amounts and other coverage limitations arising from events other than acts of terrorism.

As conditions for Federal payment under the Program, insurers must provide clear and conspicuous disclosure to the policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program. In addition, the Act requires that insurers must submit a claim and certain certifications to Treasury. Treasury will engage in rulemaking to prescribe claims procedures for the Program at a later date.

The Act also contains specific provisions designed to manage litigation arising from or relating to a certified act of terrorism. Section 107 creates an exclusive Federal cause of action, provides for claims consolidation in Federal court and contains a prohibition on Federal payments for punitive damages under the Program. 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.

1. Three Year Program

The duration of the Program is three years. The Act was signed into law on November 26, 2002, and section 108(a) of the Act provides that, ''[t]he Program shall terminate on December 31, 2005.'' Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation and reimbursement for insured losses arising out of any act of terrorism occurring during the period between November 26, 2002, and December 31, 2005. The duration of the Program and the Program's termination date should *not* be confused with the make available requirements contained in section 103(c) of the Act. As reflected in both the interim final and final rules, the make available requirements in section 103(c) of the Act apply to all insurers, through the end of Program Year 2. However, the Secretary of the Treasury may determine, not later than September 1, 2004, to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. Regardless of whether the make available requirements of section 103 are extended, the Program and the Act's Federal backstop for insured losses for acts of terrorism continue through December 31, 2005.

2. Program Implementation Goals

In implementing the Program, Treasury is guided by several goals. First, Treasury strives to implement the Act in a transparent and effective manner that treats comparably those insurers required to participate in the Program and provides necessary information to policyholders in a useful and efficient manner. Second, in accord with the Act's stated purposes, Treasury seeks to rely as much as possible on the State insurance regulatory structure. In that regard, Treasury has coordinated the implementation of all aspects of the Program with the National Association of Insurance Commissioners (NAIC). Third, to the extent possible within statutory constraints, Treasury seeks to allow insurers to participate in the Program in a manner consistent with procedures used in their normal course of business. Finally, given the temporary and transitional nature of the Program, Treasury is guided by the Act's goal for insurers to develop their own capacity, resources, and mechanisms for terrorism insurance coverage when the Program expires.

B. The Proposed Rule

The proposed rule proposed to amend subpart D of part 50 in title 31 of the Code of Federal Regulations by adding sections 50.30, 50.33, 50.35, and 50.36. Subpart A of part 50 addresses the scope and purpose of the Program, key definitions and certain general provisions and was finalized and published in the **Federal Register** at 68 FR 41250 (July 11, 2003) (as amended at 68 FR 48280 (August 13, 2003)). Subparts B and C were established by an interim final rule published in the **Federal Register** at 68 FR 19301 (Apr. 18, 2003) and were recently finalized. Subpart B incorporates and clarifies certain conditions for Federal payment contained in section 103(b) of the Act that require insurers to provide certain clear and conspicuous disclosures to their policyholders with regard to terrorism risk insurance for insured losses under the Program. Subpart C clarifies requirements in section 103(c) of the Act that insurers ''make available,'' in all of their commercial property and casualty insurance policies, coverage for insured losses

resulting from an act of terrorism as defined by section 102(1) of the Act. In this regard, section 103(c) requires insurers to make such terrorism risk coverage available at terms, amounts and other coverage limitations that do not differ materially from those applicable to losses arising from events other than from acts of terrorism. Subpart D, as directed by section 103(d)(1) of the Act, applies the provisions of the Act to State residual market insurance entities and State workers' compensation funds. In the preamble to the proposed rule, Treasury requested comment on application of the disclosure requirements of the Act to State residual market insurance entities and State workers' compensation funds. As part of this rulemaking, Treasury is amending section 50.19 of subpart B, which was previously reserved, to apply the disclosure requirements to those entities.

The various rules reflect earlier interim guidance notices, issued by Treasury soon after the Act's enactment date, and designed to assist insurers, policyholders, and other interested parties in complying with immediately applicable and time-sensitive requirements.[1] In finalizing this rule, Treasury carefully considered the comments submitted and consulted with the NAIC.

II. Summary of Comments and Final Rule

Treasury received four comments on the proposed rule. Comments were submitted by a group of insurance trade associations, the Ohio Bureau of Workers' Compensation, and a State residual market insurance entity. After review and careful consideration of these comments, as well as additional research and consultation with the NAIC, Treasury is now promulgating a final rule applying the Act to State residual market insurance entities and State workers' compensation funds (referred to collectively as ''residual market mechanisms'' where appropriate). Treasury has made no changes to the proposed rule. Treasury is, however, adding specific disclosure provisions by amending section 50.19. The final rule and amendment to section 50.19, including clarifications, are discussed in the summary of comments below.

A. Mandatory Participation by Residual Market Mechanisms (Section 50.30)

In subpart D of this final rule, Treasury is setting forth regulations specific to the participation of residual market mechanisms in the Program. Section 102(6) of the Act specifically includes State residual market insurance entities and State workers' compensation funds as insurers that are required to participate in the Program. As we stated in the notice of proposed rulemaking (published in the **Federal Register** at 68 FR 19309 on April 18, 2003), Treasury considers the Act's terms ''State residual market insurance entities'' and ''State workers' compensation funds'' to encompass all State legislatively-created residual market mechanisms that facilitate the availability of primary and excess commercial property and casualty insurance coverage for risks that face difficulties in obtaining such coverage from the voluntary market. This includes—but is not limited to—residual market mechanisms associated with the provision of commercial property, commercial liability, workers' compensation, and commercial automobile coverage. Sections 50.30(a) and (b) of this final rule, taken together, provide that residual market mechanisms are insurers under the Program, even if they do not receive direct earned premiums, and thus are mandatory participants in the Program.

1. List of Residual Market Mechanisms

In its second notice of interim guidance (67 FR 78864), Treasury first published a list of entities that Treasury, in consultation with the NAIC, identified as residual market mechanisms required to participate in the Program and that provide commercial property and casualty insurance, as defined by the Act and regulations. The list is not exclusive. A residual market mechanism should not assume that because it is not listed on Treasury's *List of State Residual Market Mechanisms* it is not required to participate in the Program. *All* State residual market insurance entities and State workers' compensation funds are insurers that *must* participate in the Program. See sections 50.5(f)(1)(D) and 50.4. Treasury's list was merely intended to provide guidance and certainty to those entities on the list as well as to foster transparency in the Program.

In the notice of interim guidance, Treasury encouraged residual market mechanisms that were not included on the list to notify Treasury. Since the publication of that notice of interim guidance, Treasury has continued to work with the NAIC to revise the *List of State Residual Market Mechanisms.* Section 50.30(c) of this final rule explains that Treasury will maintain and continue to update this list from time to time, as necessary. Treasury's list will be publicly available at *www.treasury.gov/trip,* along with the procedures for providing comments and updates.

Treasury, in consultation with the NAIC, has considered the following characteristics in identifying residual market mechanisms that should be included on Treasury's list:

- Was the mechanism created by a state legislature?
- Does the mechanism provide commercial property and casualty insurance to policyholders, either directly or through servicing carriers?
- Does the mechanism seek to make available commercial property and casualty insurance for risks that are ''distressed'' or ''hard to place'' in the voluntary market?
- How does the mechanism share or allocate its profits and losses from its operations?
- Does the mechanism meet the requirements of § 50.5(f)?

2. State Workers' Compensation Reinsurance Pools

Treasury received a comment from the Minnesota Workers' Compensation Reinsurance Association (''WCRA''), a State workers'' compensation reinsurance pool, that requested the Secretary exercise his discretion under section 103(f) of the Act (which mentions State workers' compensation reinsurance pools) and include such pools in the Program. Treasury is not making a section 103(f) determination at this time. However, looking beyond the commenter's name to its function, Treasury has determined that the commenter fits within the residual market mechanism category under section 103(d) of the Act, as explained below.

The WCRA is a State-mandated reinsurance pool from which workers' compensation insurers are required by State law to purchase excess reinsurance. WCRA also provides workers' compensation insurance directly to self-insured employers. While section 102(12)(vii) of the Act expressly excludes reinsurance from the definition of property and casualty insurance covered by the Program, Treasury believes that an insurance arrangement between a self-insured and

[1] These interim guidance notices were published in the **Federal Register** at 67 FR 76206 (Dec. 11, 2002); 67 FR 78864 (Dec. 26, 2002) and at 68 FR 4544 (Jan. 29, 2003). Treasury also issued a fourth interim guidance at 68 FR 15039 (Mar. 27, 2003), which has subsequently been superceded by a new provision in the final rule for Subpart A, published at 68 FR 41250 (July 11, 2003). The interim guidance and all regulations can also be located on Treasury's Terrorism Risk Insurance Program Web site at *www.treasury.gov/trip.*

an insurer, or a pool of insurers, is more like direct primary or excess property and casualty insurance versus traditional reinsurance (*i.e.*, an insurer reinsuring another insurer).

After consulting with the NAIC and considering the characteristics described above, Treasury considers WCRA to be similar to a residual market mechanism. WCRA is a legislatively-established risk pool that issues insurance directly to policyholders, which risks are hard to place in the voluntary insurance market. WCRA also has a procedure through which it shares or allocates its profits and losses with private sector insurers. Therefore, for these reasons, Treasury has added WCRA to its *List of State Residual Market Mechanisms* and its participation in the Program is confirmed. If any other State workers' compensation reinsurance pool believes that it shares the characteristics of a residual market mechanism and believes it should be included on the list, under section 50.9, the reinsurance pool should submit a request for an interpretation of the application of these regulations to its particular circumstance.

B. Allocation of Premium (Sections 50.33 through 50.36)

Section 103(d)(2) of the Act divides residual market mechanisms into two broad classes for purposes of their treatment as insurers under the Program: (1) entities that do not share profits and losses with private sector insurance companies; and (2) entities that do share profits and losses with private sector insurance companies.

Section 103(d)(2)(A) provides that ''a State residual market insurance entity that does not share its profits and losses with private sector insurers shall be treated as a separate insurer.'' For State residual market insurance entities that fall under section 103(d)(2)(A) of the Act or for State workers' compensation funds, section 50.33 of the final rule provides that these mechanisms follow the regulations set forth in sections § 50.5(d)(1) or § 50.5(d)(2) for the purposes of calculating the appropriate measure of direct earned premium. Residual market mechanisms functioning in this manner are thus treated as risk bearers in the same manner as private sector insurers. Treasury received a comment from a group of trade associations that endorsed this approach. These provisions of the proposed rule are adopted without change.

Section 103(d)(2)(B) of the Act provides that ''a State residual market insurance entity that shares its profits and losses with private sector insurers shall not be treated as a separate insurer, and shall report to each private sector insurance participant its share of the insured losses of the entity, which shall be included in each private sector insurer's insured losses.'' Section 103(d)(3) of the Act provides that ''any insurer that participates in sharing profits and losses of a State residual market insurance entity shall include in its calculations or premiums any premiums distributed to the insurer by the State residual market insurance entity.'' Residual market insurance mechanisms functioning in this manner are thus treated as risk apportioning entities and not risk bearing entities. Proposed section 50.35 reflected this treatment and also provided that these entities should continue to report, in accordance with normal business practices, to each participant insurer its share of premium income and insured losses, which is to be included respectively in the participant insurer's direct earned premium and insured loss calculations. Treasury received a comment from a group of trade associations that supported this approach. This provision of the proposed rule is adopted without change.

Section 50.36 of the proposed rule further addressed the calculation of direct earned premium based on the allocation of premium income shared between the residual market mechanism and its servicing carriers or participant insurers. Favorable comments were received on this provision, which is adopted without change.

C. Other Issues

State Residual Market Mechanisms and Natural Disaster Insurance

Treasury received a comment from a residual market mechanism that issues commercial policies that provide coverage only for the peril of wind. The commenter requested that Treasury modify section 50.5(l) of the regulations to exclude commercial single peril wind insurance from the provisions of the Act. The commenter analogized single peril wind insurance to that of flood insurance and earthquake insurance, which are not included in the Program. *See* section 50.5(l)(1). Upon consideration of the comment, Treasury is not revising section 50.5(l). However, as stated in the preamble to the final rule published July 11, 2003, Treasury may later request comment on the exclusion from the Program definition of commercial property and casualty insurance single-peril natural disaster insurance currently included in the Program.

D. Disclosure Requirements (Section 50.19)

Subpart B of 31 CFR part 50 sets forth regulations that address, *inter alia,* the clear and conspicuous disclosures that all insurers are required by the Act to provide to policyholders. Section 50.19 of subpart B, entitled *Disclosure by State residual market insurance entities and State workers' compensation funds,* had been reserved pending this rulemaking. This final rule amends 50.19 to address how residual market mechanisms are to comply with the Act's disclosure requirements.

Section 102(6) of the Act specifically includes residual market mechanisms as insurers that are required to participate in the Program. As a condition for Federal payment under the Program, section 103(b)(2) of the Act requires that insurers provide clear and conspicuous disclosure to policyholders of the premium charged for insured losses covered by the Program and the Federal share of compensation under the Program. Section 103(d) of the Act directed the Secretary of the Treasury to issue regulations as soon as practicable that apply the provisions of the Act (including the disclosure requirements) to residual market mechanisms.

On December 18, 2002, Treasury issued a second notice of interim guidance (67 FR 78864). In this notice of interim guidance Treasury indicated it would temporarily waive the disclosure requirements for those insurers that: (1) are State residual market insurance entities and State workers' compensation funds; and (2) have insufficient information to issue the disclosures, until Treasury issued regulations as required under section 103(d) to apply the provisions of the Act to these entities. Thus, the waiver provided a safe harbor pending the issuance of this final rule. We expected residual market mechanisms to have provided the disclosures if they possessed sufficient information to do so.

In the preamble to the proposed rule, Treasury stated that it was still evaluating the applicability of the disclosure requirements to certain insurers in this category and asked for public comment. Treasury received two comments on this issue. One comment deferred the issue to Treasury. Another commenter requested that Treasury exempt State workers' compensation funds from the disclosure requirements. The commenter argued that the burden and cost associated with providing the disclosures outweighs the goals of such

notice, especially where the fund does not charge additional premium for insured losses.

Section 103(b) of the Act requires that insurers make certain disclosures to policyholders as a condition for federal payment under the Act. Section 50.10 of the regulations states, in part, that an insurer must provide clear and conspicuous disclosure to the policyholder of: (1) the premium charged for insured losses covered by the Program; and (2) the Federal share of compensation for insured losses under the Program. Congress required this disclosure in order ''to enhance the competitiveness of the marketplace by better enabling consumers to comparison shop for terrorism insurance coverage, and to make policyholders better aware that the Federal government will be sharing the costs of such coverage with insurers thereby reducing the insurers' exposure.'' H.R. Conf. Rep. No. 107–779, at 24 (2002).

After consideration of the comment and the relevant provisions of the Act, and following consultation with NAIC and additional study of the issue, Treasury is applying disclosure provisions to residual market mechanisms that have not yet issued disclosures to policyholders. Thus, Treasury is issuing regulations relating to the disclosures required of State residual market insurance entities and State workers' compensation funds by amending section 50.19 of subpart B in this final rule. These regulations supercede the earlier interim guidance referenced above and the safe-harbor provided in that guidance will no longer be available to these insurers.

Section 50.19 generally follows the regulations applicable to all other insurers. In order to provide residual market insurance mechanisms with sufficient time to come into compliance (if they are not already), section 50.19 provides a 90-day safe harbor. For policies in force on October 17, 2003, or issued or renewed on or before January 15, 2004, the disclosure is required by the Act but the condition for Federal payment is waived with regard to those policies until January 15, 2004. In section 50.12(c), Treasury has provided that ''an insurer may provide disclosure using normal business practices, including forms and methods of communication used to communicate similar policyholder information to policyholders.'' Section 50.19(b) extends this rule to State residual market insurance entities and State workers' compensation funds and clarifies that while disclosures may be made by the residual market mechanism, the individual insurers that participate in the residual market, or the servicing carriers (depending on their normal business practices), the ultimate responsibility for ensuring that the disclosure requirements have been met rests with the insurer that will be filing any claim. In accordance with other requirements of subpart B, disclosure must be clear and conspicuous, made on a separate line item in the policy at the time of offer, purchase, and renewal of the policy.

III. Procedural Requirements

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Preemptions of terrorism risk exclusions in policies, mandatory participation provisions, disclosure and other requirements and conditions for Federal payment contained in the Act applied immediately to those entities that come within the Act's definition of ''insurer.''

This rule amends subpart D to part 50 in title 31 that addresses how the Program applies to State residual market insurance entities and State workers' compensation funds. This rule also amends section 50.19 of subpart B. This rule is intended to respond to section 103(d)(1) of the Act, which directs Treasury to issue regulations that apply the provisions of the Act to State residual market insurance entities and State workers' compensation funds. Given the importance of applying regulations to State residual market insurance entities and State workers' compensation funds, there is an urgent need to issue immediately effective regulations.

Accordingly, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the final rule to become effective immediately upon publication.

This final rule is a significant regulatory action and has been reviewed by the Office of Management and Budget under the terms of Executive Order 12866.

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Act itself requires State residual market insurance entities and State workers' compensation funds to participate in the Program, and these entities or funds are generally not small entities.

The Act itself requires all licensed or admitted insurers to participate in the Program. This includes all insurers regardless of size or sophistication. Although insurers that participate in sharing profits and losses of a State residual market insurance entity or State workers' compensation fund may include small entities, the proposed rule is based on existing business practices of residual market entities in determining the impact on participating insurers. The Act also defines property and casualty insurance to mean commercial lines without any reference to the size or scope of the commercial entity. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed 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 backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss 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, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C 6701 note).

■ 2. Section 50.19 of subpart B is revised to read as follows:

§ 50.19 1General 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 practices, 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).

■ 3. Subpart D of part 50 is amended by adding §§ 50.30, 50.33, 50.35, and 50.36 to read as follows:

§ 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.* Procedures for providing comments and updates to that list will be posted with the list.

§ 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.

§ 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 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.

§ 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.

Dated: October 1, 2003.

Wayne A. Abernathy,

Assistant Secretary of the Treasury.

[FR Doc. 03–26250 Filed 10–16–03; 8:45 am]

BILLING CODE 4811–15–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505–AA98

Terrorism Risk Insurance Program; Disclosures and Mandatory Availability Requirements

AGENCY: Departmental Offices, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule concerning disclosures and mandatory availability requirements as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The final rule incorporates and clarifies conditions for federal payment, set forth in section 103(b) of the Act, that require insurers to make certain disclosures to policyholders. It also incorporates and clarifies the section 103(c) requirements that insurers ''make available'' in their commercial property and casualty policies terrorism risk insurance coverage for insured losses resulting from certified acts of terrorism under the Act. Treasury issued an interim final rule and proposed rule with request for comment. This final rule, which is the second in a series of regulations that Treasury is issuing to implement the Program, adopts the interim final rule with several modifications as discussed below.

DATES: This final rule is effective October 17, 2003.

FOR FURTHER INFORMATION CONTACT: Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, or Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

I. Background

A. Terrorism Risk Insurance Act of 2002

On November 26, 2002, President Bush signed into law the Terrorism Risk Insurance Act of 2002 (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