reasonably reflects compensation earned over the period of employment and the compensation involved represents a reasonable payment for services rendered; and

(f) Any other factor the Director determines relevant to the facts and circumstances surrounding the golden parachute or indemnification payment, including but not limited to negligence, gross negligence, neglect, willful misconduct, breach of fiduciary duty, and malfeasance on the part of an entity-affiliated party.

Dated: September 11, 2008.

James B. Lockhart, III,

Director, Federal Housing Finance Agency.

[FR Doc. E8–21650 Filed 9–12–08; 11:15 am]

BILLING CODE 8070–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Docket No. FAA–2008–0939; Airspace Docket No. 08–ASW–7]

RIN 2120–AA66

Change of Using Agency for Restricted Area R–3807, Glencoe, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the using agency of R–3807, Glencoe, LA, from ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL,'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' The FAA is taking this action in response to a request from the United States Air Force (USAF) to reflect an administrative change of responsibility for the restricted area. There are no changes to the boundaries; designated altitudes; time of designation; or activities conducted within the affected restricted area.

DATES: *Effective Dates:* 0901 UTC, November 20, 2008.

FOR FURTHER INFORMATION CONTACT: Colby Abbott, Airspace and Rules Group, Office of System Operations Airspace and AIM, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; *telephone:* (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On March 13, 2008, the USAF requested that the FAA change the using agency for R–3807 from, ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL,'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' The USAF request was based on the Southeast Air Defense Sector (SEADS) transitioning to a new mission and the WADS unit assuming responsibility for the SEADS area of responsibility, including all special use airspace within that area. Coordination between the two air defense sector airspace management offices, as well as Houston Air Route Traffic Control Center, was effected prior to this using agency change request being submitted by the USAF.

Section 73.63 of Title 14 CFR part 73 was republished in FAA Order 7400.8P, effective February 16, 2008.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 73 by revising the using agency listed for R–3807, Glencoe, LA; transferring using agency responsibility for R–3807 from ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL'' to ''Western Air Defense Sector (WADS), McChord AFB, WA.'' This is an administrative change and does not affect the boundaries, designated altitudes, or activities conducted within the restricted area; therefore, notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it is amending the using agency for R–3807, Glencoe, LA.

Environmental Review

The FAA has determined that this action qualifies for a categorical exclusion under the National Environmental Policy Act in accordance with 311d., FAA Order 1050.1E, ''Environmental Impacts: Policies and Procedures.'' There are no extraordinary circumstances that would require additional environmental analysis.

List of Subjects in 14 CFR Part 73

Airspace, Prohibited areas, Restricted areas.

Adoption of the Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.38 [Amended]

■ 2. Section 73.38 is amended as follows:

* * * * *

R–3807 Glencoe, LA [Amended]

Under using agency, remove ''USAF, Southeast Air Defense Sector, Tyndall AFB, FL'' and insert the words ''Western Air Defense Sector (WADS), McChord AFB, WA.''

* * * * *

Issued in Washington, DC, on September 4, 2008.

Edith V. Parish,

Manager, Airspace and Rules Group.

[FR Doc. E8–21522 Filed 9–15–08; 8:45 am]

BILLING CODE 4910–13–P

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: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing this interim final rule as part of its implementation of 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 extends the Program through December 31, 2014, revises the definition of an ''act of terrorism,'' and makes other changes. This interim 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.

DATES: This interim final rule is effective September 16, 2008. Written comments on this interim final rule must be submitted on or before October 16, 2008.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov*, or by mail (if hard copy, preferably an original and two copies) to: Terrorism Risk Insurance Program, Public Comment Record, Suite 2100, Department of the Treasury, 1425 New York Avenue, NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. All comments should be captioned with ''TRIA Reauthorization Act Interim Final Rule Comments.'' Please include your name, affiliation, address, e-mail address, and telephone number in your comment. Comments will be available for public inspection on the Federal eRulemaking Portal and by appointment at the TRIP Office. To make appointments, call (202) 622–6770 (not a toll-free number).

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).

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 extends the Program through December 31, 2014 (*i.e.*, adds 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. Previously Issued Interim Guidance

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Reauthorization Act, on December 31, 2007, Treasury posted draft interim guidance on its Web site. A Notice containing that interim guidance was published in the **Federal Register** on January 29, 2008 (73 FR 5264). The notice stated that the guidance could be relied upon by insurers in complying with new statutory requirements prior to the issuance of regulations, but was not the exclusive means of compliance. The interim guidance is superseded by this interim final rule.

II. Analysis of the Interim Final Rule

This interim final rule incorporates certain changes to 31 CFR Part 50 required by the amendments to TRIA in the Reauthorization Act. The rule generally incorporates the substance of the interim guidance previously issued by Treasury. In addition, the rule includes 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. Regulations for determining how the *pro rata* share of insured losses is to be paid under the Program when aggregate insured losses exceed the annual liability cap and regulations implementing the recoupment provisions of the Act will be issued separately. Treasury has consulted with the National Association of Insurance Commissioners (NAIC) in developing this rule.

Although Treasury is issuing these requirements as an interim final rule, we are soliciting comments on all aspects of the interim final rule from all interested parties.

A. Definitions (§ 50.5)

The interim 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.

As noted in the Interim Guidance, Treasury recognizes that the existing language in property and casualty insurance policies describing a "certified" act of terrorism covered by TRIA and other terrorist events has varied. In addition, insurers have designed their insurance contracts and notifications to policyholders concerning potential changes to the certification criteria for acts of terrorism differently. Insurers must determine how their existing policy language and particular circumstances are affected by the revised definition of an act of terrorism. The decision whether to certify an act of terrorism will be governed by the criteria in TRIA, as amended by the Reauthorization Act. Treasury will consider losses resulting from an act of terrorism (as now defined in TRIA) that are covered by an insurer under a policy for property and casualty insurance to be insured losses covered by the Program, provided the insurer makes payment to the policyholder in accordance with the terms and conditions of the policy, appropriate business practices, and other applicable requirements and conditions, *e.g.*, disclosure.

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 interim 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. These disclosures must be made on a separate line item in the policy, at the time of offer, purchase, and renewal of the policy. 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.

Under Section 50.13(a) of the current regulations, disclosures must be made no later than the time the insurer first formally offers to provide insurance coverage or renew a policy for a current policyholder. Section 50.12(b)(2) of the interim 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, and as further explained below, 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.

The Interim Guidance addressed the possibility that an insurer processed a policy application or renewal in 2007 for coverage becoming effective in 2008, but did not make available terrorism coverage or did not provide a proper disclosure due, in part, to the expected expiration of TRIA on December 31,

2007. Treasury also recognized that an insurer might have to modify operations and might be subject to rate and policy form filing and/or prior approval processes to reflect changes to TRIA in the Reauthorization Act.

Section 50.12(e)(3) of the interim 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. For example, if an insurer made available coverage in an offer of renewal in January 2008 as required by the Reauthorization Act, but did not provide a disclosure either at the time of the offer of renewal or the purchase, then it must provide a disclosure as soon as possible after 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 interim 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 interim 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. As stated in the Interim Guidance, 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)

Under current section 50.17(e) of the TRIA regulations, insurers are permitted to use NAIC Model Disclosure Forms No. 1 and 2 to satisfy the disclosure requirements of section 103(b)(2) of the Act, provided that the insurer uses the most current forms that are available at the time of disclosure. On December 19, 2007, the NAIC modified the forms and Treasury has deemed the newly modified forms to satisfy the disclosure requirements, 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.

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

F. Make Available (§§ 50.20 and 50.21)

The Reauthorization Act made no change to the TRIA requirements in section 103(c) that insurers make available, in all property and casualty insurance policies, 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. 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 interim 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. Although there are no substantive changes to existing provisions, the entire section is set forth in the interim final rule for the convenience of the reader. In all cases where new offers are required, 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. The Interim Guidance stated that 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. As noted in the Interim Guidance, if an insurer wishes to receive Federal compensation under the Program for insured losses, the insurer must make available coverage for insured losses for all policies becoming effective in 2008, even if the policy was processed in late 2007 or early 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. These rules are consistent with the Interim Guidance Treasury first released on December 31, 2007, which has been in effect since that time.

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

These sections of the interim 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

The Reauthorization Act extended the Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act's extension and other new provisions became effective immediately upon the date of enactment. Changes contained in the Reauthorization Act applied immediately to those entities that come within the Act's definition of ''insurer.''

The Reauthorization Act revised the definition of an ''act of terrorism'' to include domestic terrorism within the Program, which had an immediate impact on insurers' compliance with existing disclosure and ''make available'' requirements under TRIA. In addition, the Reauthorization Act added a new disclosure that applied to any policies issued beginning on the day after the date of enactment. These changes, which affected both insurers' obligations under TRIA and the conditions for payment by the Federal Government, resulted in the need to provide immediate guidance to insurers, policyholders, and regulators. Given the significance of these changes made by the Reauthorization Act, there is an urgent need to issue immediately effective regulations that incorporate the substance of interim guidance with regard to these requirements.

Accordingly, pursuant to 5 U.S.C. 553(b)(B), Treasury has determined that it would be contrary to the public interest to delay the publication of this rule in final form pending an opportunity for public comment. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for the interim final rule to become effective immediately upon publication. While this regulation is effective immediately upon publication, Treasury is seeking public comment on the regulation and will consider all comments in developing a final rule. This interim 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 interim final rule will not have a significant economic impact on a substantial number of small entities. The interim 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 interim final rule flows from the Act and not the interim 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, 31 CFR part 50 is amended as follows:

PART 50—TERRORISM RISK INSURANCE PROGRAM

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

Authority: 5 U.S.C. 301; 31 U.S.C. 321; Title I, Public Law 107–297, 116 Stat. 2322, as amended by Public Law 109–144, 119 Stat. 2660 and Public Law 110–160, 121 Stat. 1839 (15 U.S.C. 6701 note).

■ 2. Section 50.1 is amended by revising paragraph (a) to read as follows:

§ 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, Public Law 107–297, 116 Stat. 2322, as amended by the Terrorism Risk Insurance Extension Act of 2005, Public Law 109–144, 119 Stat. 2660, and the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839.

* * * * *

■ 3. Section 50.5 is amended by revising paragraphs (b)(1)(iv), (g)(1)(vi), (l), and (m) to read as follows:

§ 50.5 Definitions.

* * * * *

(b) * * *

(1) * * *

(iv) To have been committed by an individual or individuals 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.

* * * * *

(g) * * *

(1) * * *

(vi) For Program Year 5 (January 1, 2007 through December 31, 2007), or any Program Year thereafter, the value of an insurer's direct earned premiums over the calendar year immediately preceding that Program Year, multiplied by 20 percent; and

* * * * *

(l) *Program Trigger event* means a certified act of terrorism that occurs after March 31, 2006, for which the aggregate industry insured losses resulting from such act exceed $50,000,000 with respect to such insured losses occurring in 2006 or $100,000,000 with respect to such insured losses occurring in 2007 and any Program Year thereafter.

(m) *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 though December 31, 2004), Program Year 3 (January 1, 2005 through December 31, 2005), Program Year 4 (January 1, 2006 through December 31, 2006), Program Year 5 (January 1, 2007 through December 31, 2007), and any Program Year thereafter (calendar years 2008 through 2014).

* * * * *

■ 4. Section 50.7 is amended by revising paragraphs (b)(3) and (b)(4) and adding paragraph (b)(5) to read as follows:

§ 50.7 Special Rules for Interim Guidance Safe Harbors.

* * * * *

(b) * * *

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

(4) Interim Guidance IV issued by Treasury on December 29, 2005, and published at 71 FR 648 (January 5, 2006); and

(5) Interim Guidance issued by Treasury on January 22, 2008, and published at 73 FR 5264 (January 29, 2008).

■ 5. Section 50.11 is revised to read as follows:

§ 50.11 Definition.

For purposes of this subpart, unless the context indicates otherwise, the term ''disclosure'' or ''disclosures'' refers to the disclosure described in section 103(b)(2) of the Act and § 50.10. The term ''cap disclosure'' refers to the disclosure required by section 103(b)(3) of the Act and § 50.15.

■ 6. Section 50.12 is amended by redesignating paragraph (b) as paragraph (b)(1) and adding paragraphs (b)(2) and (e)(3) to read as follows:

§ 50.12 Clear and conspicuous disclosure.

* * * * *

(b) * * *

(2) *Premium to reflect definition of act of terrorism.* 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 Act, consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, Public Law 110–160, 121 Stat. 1839.

* * * * *

(e) * * *

(3) 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.

■ 7. Section 50.15 is added to read as follows:

§ 50.15 Cap disclosure.

(a) *General.* Under section 103(e)(2) of the Act, if the aggregate insured losses exceed $100,000,000,000 during any Program Year, the Secretary 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.

(b) *Other requirements.* As a condition for federal payments under section 103(b) of the Act, in the case of any policy that is issued after December 26, 2007, an insurer must provide clear and conspicuous disclosure to the policyholder of the existence of the $100,000,000,000 cap under section 103(e)(2). The cap disclosure must be made at the time of offer, purchase, and renewal of the policy.

(c) *Demonstration of compliance.* 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.

(d) *Other applicable rules.* The rules in § 50.12(a), (c), (d), (e)(1), and (f) (relating to clear and conspicuous disclosure) and in § 50.13 (relating to offer, purchase, and renewal) apply to the cap disclosure.

■ 8. Section 50.17 is amended by revising the second sentence of paragraph (a)(2), by redesignating paragraph (e) as paragraph (f), and by adding paragraph (e) to read as follows:

§ 50.17 Use of model forms.

(a) * * *

(2) * * * Such an insurer may also use the same NAIC Model Disclosure Form No. 1 to comply with the notice requirement of section 105(c) of the Act.* * *

* * * * *

(e) *Cap disclosure.* An insurer may use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 dated December 19, 2007, or as subsequently modified in accordance with paragraph (f) of this section, to satisfy the cap disclosure requirement, or another disclosure that meets the requirements of § 50.15 may be developed.

■ 9. Section 50.18 is amended by revising the section title to read as follows:

§ 50.18 Notice required by reinstatement provision.

■ 10. Section 50.20 is amended by revising paragraph (c) and adding paragraphs (d) and (e) to read as follows:

§ 50.20 General mandatory availability requirements.

* * * * *

(c) *Program Years 4 and 5—calendar years 2006 and 2007.* Under section 103(c) of the Act, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Years 4 and 5.

(d) *Program Years thereafter.* Under section 103(c) of the Act, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Years 2008 through 2014.

(e) *Beyond 2014.* Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2014, even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

■ 11. Section 50.21 is revised to read as follows:

§ 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, and new policies issued and renewals of existing

policies during the period beginning on November 26, 2002 and ending on December 31, 2002, and in any Program Year thereafter. Except as provided in paragraph (c) of this section, 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) *Offer consistent with amended definition of act of terrorism.* An insurer must make available coverage for insured losses in a policy of property and casualty insurance consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 beginning with the first initial offer of coverage or offer of renewal of the policy made on or after December 26, 2007. Notwithstanding this requirement, 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 definition of an act of terrorism.

(c) *Rules concerning extension of Program.* (1) *Special Program Year 4 requirement for certain new policies issued and renewals of existing policies in Program Year 3.* If coverage for insured losses under a policy of property and casualty insurance (as defined by the Act, as amended) expired as of December 31, 2005, but the remainder of coverage under the policy continued in force in Program Year 4, then an insurer must make available coverage as provided in § 50.20 for insured losses for the remaining portion of the policy term in the manner specified in paragraphs (e)(1) and (e)(2) of this section. This requirement does not apply if during Program Year 3 a policyholder declined an offer of coverage for insured losses made at the time of the initial offer of coverage or offer of renewal of the existing policy.

(2) *Special 2008 requirement for certain policies where coverage expired.* If coverage for insured losses under a policy of property and casualty insurance expired as of December 31, 2007, but the remainder of coverage under the policy continued in force in 2008, then an insurer must make available coverage as provided in § 50.20 for insured losses for the remaining portion of the policy term in the manner specified in paragraphs (e)(1) and (e)(4) of this section. However, if a policyholder declined an offer made by an insurer for such coverage expiring as of December 31, 2007, then the insurer is not required to make a new offer of coverage for insured losses before any offer of renewal.

(d) *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.

(e) *Demonstrations of compliance.* (1) *No contract.* 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.

(2) *Policy periods beginning in Program Year 3.* If an insurer must make available coverage for insured losses as required by paragraph (c)(1) of this section for a policy whose coverage period began in Program Year 3 but extends into Program Year 4, then the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage by January 1, 2006, or as soon as possible following that date.

(3) *Coverage becoming effective in Program Year 4.* If an insurer processed a new policy or policy renewal in Program Year 3 for coverage becoming effective in Program Year 4, but did not make available coverage for insured losses as required by § 50.20 by January 1, 2006, 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 that date.

(4) *Coverage expired as of December 31, 2007.* If an insurer must make available coverage for insured losses under the circumstances described in paragraph (c)(2) of this section, the insurer must be able to demonstrate to Treasury's satisfaction that it has offered such coverage as soon as possible following January 1, 2008.

(5) *Coverage becoming effective in 2008.* (i) *No coverage.* 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 as required by § 50.20(a), 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.

(ii) *Not consistent with amended definition of act of terrorism.* If an insurer made an initial offer of coverage or offer of renewal on or after December 26, 2007 for a policy term becoming effective in 2008, and made available coverage for insured losses, but the scope of the coverage for insured losses in the offer was not consistent with the definition of an act of terrorism as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007, then the insurer must be able to demonstrate to Treasury's satisfaction that it has provided 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 the insurer made available coverage for insured losses in compliance with the Act and the definition of an act of terrorism in effect 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 by its terms, regardless of whether the offer was accepted or rejected.

■ 12. Section 50.50 is amended by revising paragraphs (a)(1)(ii), (b)(2), and (d)(5) to read as follows:

§ 50.50 Federal share of compensation.

(a) * * *

(1) * * *

(ii) 85 percent of that portion of the insurer's aggregate insured losses that exceed its insurer deductible during Program Year 5 and any Program Year thereafter.

(b) * * *

(2) For a certified act of terrorism occurring in 2007 and any Program Year thereafter: $100 million.

* * * * *

(d) * * *

(5) The insurer had provided a clear and conspicuous disclosure as required by §§ 50.10 through 50.19 and a cap disclosure as required by § 50.15;

* * * * *

■ 13. Section 50.53 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 50.53 Loss certifications.

* * * * *

(b) * * *

(2) * * *

(iv) The insurer has complied with the disclosure requirements of §§ 50.10

through 50.19, and the cap disclosure requirement of § 50.15, for each underlying insured loss that is included in the amount of the insurer's aggregate insured losses; and

* * * * *

David G. Nason,

Assistant Secretary (Financial Institutions).

[FR Doc. E8–21578 Filed 9–15–08; 8:45 am]

BILLING CODE 4810–25–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2007–1043; FRL–8714–1]

Approval and Promulgation of Air Quality Implementation Plans; Michigan; PSD Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is conditionally approving into Michigan's State Implementation Plan (SIP) specified revisions to add the prevention of significant deterioration (PSD) construction permit program for the purpose of meeting the requirements of the Clean Air Act (CAA) with regard to new source review in areas attaining the National Ambient Air Quality Standards. The Michigan Department of Environmental Quality (MDEQ) submitted these rules to EPA for approval and inclusion into the Michigan SIP on December 21, 2006. In addition, in a separate action in today's **Federal Register**, EPA is proposing to partially disapprove the portion of Michigan's SIP revision submission consisting of Michigan Rule R 336.2816. The PSD SIP revision affects major stationary sources in Michigan that are subject to, or potentially subject to, the PSD construction permit program.

DATES: This final rule is effective on October 16, 2008.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R05–OAR–2007–1043. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the U.S. 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 Federal holidays. We recommend that you telephone Laura Cossa, Environmental Engineer, at (312) 886–0661 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Laura Cossa, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–0661, *cossa.laura@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. What Is Being Addressed in This Document?
II. What Proposed Revisions Are Included in the Conditional Approval?
III. What Proposed Revisions Are Not Included in Today's Conditional Approval?
IV. What Were the Comments Received and EPA's Response to Comments?
V. What Action Is EPA Taking?
VI. Statutory and Executive Order Reviews

I. What Is Being Addressed in This Document?

MDEQ submitted Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) ("Part 18") to EPA on December 21, 2006, for EPA approval and inclusion into the Michigan SIP. Part 18 relates to Michigan's PSD permit program. Michigan adopted revisions to Part 18 on December 4, 2006. Prior to approval of Michigan's submitted PSD program, EPA delegated to Michigan the authority to issue PSD permits through the Federal PSD rules at 40 CFR 52.21 (via delegation letter dated September 26, 1988).

On January 9, 2008, EPA proposed to conditionally approve Michigan's PSD SIP rules under section 110 of the CAA. (73 FR 1570, January 9, 2008). EPA received a number of comments on our proposal (see discussion in Section IV below). After considering the comments received, EPA is finalizing most of our proposed conditional approval of Michigan Air Pollution Control Rules, Part 18, Rules R 336.2801 to R 336.2819 and R 336.2823(1) to (14) (with one exception discussed in more detail below). Under section 110(k)(4) of the CAA, EPA may conditionally approve a SIP revision based on a commitment from the State to adopt specific enforceable measures by a date certain that is no more than twelve months from the date of the conditional approval.

In addition, in a separate action also published today, EPA is proposing to disapprove Michigan Rule R 336.2816, which is also included in the State's December 21, 2006, PSD program submission. This rule sets out the mechanisms which facilitate the participation of the Federal Land Manager (FLM) in the State's permitting process for purposes of protecting either the increment or the Air Quality Related Values (AQRVs) associated with a Class I area from potential impacts from a proposed major source or major modification. Michigan will retain its Federal delegation of authority under 40 CFR 52.21(p) until such time as the State submits promulgated rules equivalent to 40 CFR 51.166(p) and those rules are approved into its SIP. Under section 110(k)(3), EPA may disapprove a part of a SIP revision if the partial disapproval meets certain conditions discussed in Section III, below.

Further, EPA is proposing to approve in the alternative a revised Michigan Rule R 336.2816 once the State submits and EPA approves promulgated rules equivalent to 40 CFR 51.166(p), which the State has committed to do.

Michigan is not authorized to carry out its Federally approved air program in "Indian Country," as defined in 18 U.S.C. 1151. Indian Country includes: 1. All lands within the exterior boundaries of Indian reservations within the State of Michigan; 2. Any land held in trust by the U.S. for an Indian tribe; and 3. Any other land, whether on or off an Indian reservation that qualifies as Indian Country. Therefore, EPA retains the authority to implement and administer the CAA program in Indian Country.

II. What Proposed Revisions Are Included in the Conditional Approval?

EPA is conditionally approving the following sections of "Part 18, Prevention of Significant Deterioration of Air Quality" of Michigan's Air Pollution Control Rules, (a detailed discussion of the reasons for the conditional approval is available in 73 FR 1043, January 9, 2008):

R 336.2801 Definitions (a) through (tt) [except for R 336.2801 (j) and (ff), reserved in original rule];
R 336.2802 Applicability;
R 336.2803 Ambient Air Increments;
R 336.2804 Ambient Air Ceilings;