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DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505-AC62

IMARA Calculation Under the Terrorism Risk Insurance Program

AGENCY: Departmental Offices, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury (Treasury) is issuing this final rule to implement technical changes to program regulations that address the calculation and notification to the public of the Terrorism Risk Insurance Program's (Program) insurance marketplace aggregate retention amount (IMARA) under the Terrorism Risk Insurance Act (Act), as amended. The changes were published in proposed form for public comment on September 6, 2019.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Terrorism Risk Insurance Act of 2002 (as amended, the Act or TRIA)¹ was enacted on November 26, 2002, following the attacks of September 11, 2001, to address disruptions in

¹ Public Law 107-297, 116 Stat. 2322, codified at 15 U.S.C. 6701 note. Because the provisions of TRIA (as amended) appear in a note instead of particular sections of the U.S. Code, the provisions of TRIA are identified by the sections of the law.

the market for terrorism risk insurance, to help ensure the continued availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for the private markets to stabilize and build insurance capacity to absorb any future losses for terrorism events.² TRIA requires insurers to “make available” terrorism risk insurance for commercial property and casualty losses resulting from certified acts of terrorism (insured losses), and provides for shared public and private compensation for such insured losses. The Program has been reauthorized three times, most recently by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (2015 Reauthorization Act).³

The Secretary of the Treasury (Secretary) administers the Program. The Federal Insurance Office (FIO) assists the Secretary in administering the Program.⁴ To assist insurers, policyholders, and other interested parties in complying with the applicable requirements of the Act, Treasury has issued regulations implementing the Program. In some instances, Treasury has also issued interim guidance to be relied upon by insurers until superseded by any regulations.⁵ Most recently, Treasury issued regulations implementing the changes to the Program required under the 2015 Reauthorization Act.⁶

The Act established an industry marketplace aggregate retention amount (IMARA) as a threshold figure to determine whether any Treasury payments under the Program are subject to mandatory recoupment. Under the Act, if total annual payments by participating insurers are

² TRIA, sec. 101(b).

³ See Terrorism Risk Insurance Extension Act of 2005, Pub. L. 109-144, 119 Stat. 2660; Terrorism Risk Insurance Program Reauthorization Act of 2007, Pub. L. 110-160, 121 Stat. 1839; Terrorism Risk Insurance Program Reauthorization Act of 2015, Public Law 114-1, 129 Stat. 3.

⁴ 31 U.S.C. 313(c)(1)(D).

⁵ Treasury summarized the history of prior rulemakings in connection with the Program in a 2016 proposed rulemaking proposing rule changes to implement the 2015 Reauthorization Act. See 81 FR 18950 (April 1, 2016) (2016 NPRM).

⁶ See 81 FR 88592 (December 7, 2016) (Certification Interim Final Rule); 81 FR 93756 (December 21, 2016) (Program Final Rules Except Certification).

below the IMARA, Treasury must recoup all amounts expended by it up to the IMARA threshold (mandatory recoupment). If total annual payments by participating insurers are above the IMARA, Treasury has the discretion to recoup all expended amounts above the IMARA threshold (discretionary recoupment).⁷

The 2015 Reauthorization Act provided for a schedule of defined IMARA values from calendar year 2015 through calendar year 2019. The 2015 Reauthorization Act also provided that for calendar year 2020 and future years the IMARA “shall be revised to be the amount equal to the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years,” as such sum is determined pursuant to a rule issued by the Secretary.⁸ The rule change adopted in this notice solely addresses the manner in which Treasury calculates the IMARA and the timing of public notification of the IMARA calculation.

II. The Proposed Rule

The proposed rule on which this final rule is based was published in the *Federal Register* at 84 FR 46907 on September 6, 2019. The proposed rule would make a technical correction to 31 CFR 50.4(m)(2)(i), originally implemented in 2016, to clarify that the IMARA calculation is based upon direct earned premium reported to Treasury by insurers in Treasury’s annual data call “*in*” the three calendar years prior to the calendar year in question, instead of “*for*” the three calendar years prior to the calendar year in question. For example, this would result in a proper calculation of the 2020 IMARA by referring to the insurer deductibles for the previous three years (2019, 2018, and 2017), which are based on reported data for calendar years 2018, 2017,

⁷ See TRIA, sec. 103(e)(7); see also 31 CFR part 50 subpart J (Recoupment and Surcharge Procedures).

⁸ TRIA, sec. 103(e)(6)(B)(ii) and (e)(6)(C). An insurer’s deductible under the Program for any particular year is 20 percent of its direct earned premium subject to the Program during the preceding year. TRIA, sec. 102(7). For example, an insurer’s calendar year 2019 Program deductible is 20 percent of its calendar year 2018 direct earned premium.

and 2016.⁹ In addition, the proposed rule accelerates the notification date of the IMARA calculation by Treasury, from no later than April 30 of the year in question to no later than December 31 of the prior calendar year. That acceleration will improve administrative efficiency and provide greater certainty to insurers and policyholders.

III. Summary of Comments and Final Rule

Treasury received one comment regarding the proposed changes concerning the IMARA calculation and the date of notification of the IMARA calculation to the public. This comment was in favor of both of the proposed changes.¹⁰ Accordingly, Treasury is issuing this final rule based upon the proposed rule without change.

IV. Procedural Requirements

Executive Order 12866, “Regulatory Planning and Review.” This rule is not a significant regulatory action for purposes of Executive Order 12866, “Regulatory Planning and Review,” and thus has not been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act. Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., Treasury must consider whether this rule will have a “significant economic impact on a substantial number of small entities.” 5 U.S.C. 605(b). In this case, Treasury certifies that this rule will not have a significant economic impact on a substantial number of small entities. The

⁹ The Program rule amended by this final rule was originally proposed in the 2016 NPRM and finalized in the Program Final Rules Except Certification. As explained in the September 2019 notice of proposed rulemaking, although the preamble to the 2016 NPRM correctly explained the methodology for calculating the IMARA in 2020 and beyond, as required by the 2015 Reauthorization Act, the language in the Program rule implemented by the Program Final Rules Except Certification is ambiguous as to how the IMARA should be calculated. Under § 50.4(m)(2)(i) of the Program rules as implemented in 2016, the IMARA calculation is to be based on the “direct earned premium reported by insurers to Treasury . . . for the three calendar years prior to the calendar year in question” (emphasis added.) This language could be interpreted to mean, for example, that the 2020 IMARA would be calculated using direct earned premiums in 2019, 2018, and 2017, rather than using the data reported in 2019, 2018, and 2017 for calendar years 2018, 2017, and 2016, as intended. This unintended interpretation would be inconsistent with the methodology specified in the 2015 Reauthorization Act and would result in an incorrect IMARA. See generally 84 FR 46907, 46907-08 (Sept. 6, 2019).

¹⁰ See Comment from Underwriters at Lloyd’s, London (Oct. 2, 2019), *available at* <https://www.regulations.gov/docket?D=TREAS-TRIP-2019-0014>.

rule provides for a technical change in the manner in which Treasury will calculate a figure relevant to operation of the Program and to better conform it to Congressional requirements. The only other rule change is to provide for earlier notice to insurers of the IMARA calculation than the existing rule. It has no effect on the collection of the data (including data collected from small entities) under the Program rules.

Paperwork Reduction Act. The rule does not involve the collection of information and thus has not been submitted to OMB for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d). The rule only involves the calculation and public notification of the IMARA in connection with the Program based on data collected by Treasury under rules which have already been subject to OMB review and approval under Control No. 1505-0257.

List of Subjects in 31 CFR Part 50

Insurance, Terrorism.

Authority and Issuance

For the reasons stated in the preamble, 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, as amended by Pub. L. 109-144, 119 Stat. 2660, Pub. L. 110-160, 121 Stat. 1839 and Pub. L. 114-1, 129 Stat. 3 (15 U.S.C. 6701 note) Pub. L. 114-74, 129 Stat. 601, Title VII (28 U.S.C. 2461 note).

2. Amend § 50.4 by revising paragraphs (m)(2) introductory text, (m)(2)(i), and (m)(3) to read as follows:

§ 50.4 Definitions.

* * * * *

(m) * * *

(2) For calendar years beginning with 2020 and any calendar year thereafter as may be necessary, such amount is the lesser of the aggregate amount, for all insurers, of insured losses once there has been a Program Trigger Event during the calendar year and the annual average of the sum of insurer deductibles for all insurers for the prior 3 years, to be calculated by taking:

(i) The total amount of direct earned premium reported by insurers to Treasury pursuant to § 50.51 in the three calendar years prior to the calendar year in question, and then dividing that figure by three; and

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(3) For calendar year 2020 and each subsequent calendar year, Treasury shall publish in the *Federal Register* the insurance marketplace aggregate retention amount no later than December 31 of the prior calendar year.

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Dated: November 7, 2019.

Bimal Patel
Assistant Secretary for Financial Institutions.
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