



Billing Code 4810-25-P

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: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (Treasury) is issuing this proposed 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.

DATES: Written comments must be submitted on or before **[INSERT DATE THAT IS 30 DAYS AFTER DATE OF PUBLICATION]**. Early submissions are encouraged.

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 the Federal Insurance Office, Attention: Richard Ifft, Room 1410 MT, Department of the Treasury, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220. Because postal mail may be subject to processing delay, it is recommended that comments be submitted electronically.

All comments should be captioned with “IMARA Calculation Proposed Rule Comments.”

Please include your name, group affiliation, address, email address, and telephone number in your comment.

In general, received comments will be posted on <http://www.regulations.gov> without change, including any business or personal information provided. Received comments, including attachments and other supporting materials, will be part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Richard Ifft, Senior Insurance Regulatory Policy Analyst, Federal Insurance Office, 202-622-2922 or Lindsey Baldwin, Senior Policy Analyst, Federal Insurance Office, 202-622-3220.

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 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

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.

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

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 its last notice of 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).

IMARA, Treasury has the discretion to recoup all expended amounts above the IMARA threshold (discretionary recoupment).⁷

The 2015 Reauthorization Act established an IMARA of \$29.5 billion beginning in calendar year 2015, and provided for an annual \$2 billion increase in the IMARA until the IMARA reached \$37.5 billion in calendar year 2019.⁸ Once the \$37.5 billion figure was reached in 2019, the 2015 Reauthorization Act provided that 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 by the Secretary.⁹ 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.¹⁰ For example, an insurer’s calendar year 2019 Program deductible is 20 percent of its calendar year 2018 direct earned premium.

The 2015 Reauthorization Act required the Secretary to issue a final rule for determining how subsequent IMARA amounts would be calculated and providing a timeline for public notification of the amount each year.¹¹

The 2015 Reauthorization Act also required that Treasury collect data from participating insurers related to the effectiveness of the Program.¹² Accordingly, Treasury stated in the preamble to the 2016 NPRM that it would calculate the IMARA beginning in calendar year 2020 based upon the data that it would be collecting:

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)(A).

⁹ TRIA, sec. 103(e)(6)(B)(ii).

¹⁰ TRIA, sec. 102(7).

¹¹ TRIA, sec. 103(e)(6)(C).

¹² TRIA, sec. 104(h).

The approach follows the direction in the 2015 Reauthorization Act that the insurance marketplace aggregate retention amount for any calendar year after the Program Trigger reaches \$37.5 billion should be based upon the average of insurer deductibles during the three prior calendar years. It calculates this figure by reference to the data that Treasury will be collecting concerning insurer participation in the Program under proposed § 50.51.¹³

In any year, Treasury collects data for the prior year. For example, in 2019, Treasury collected calendar year 2018 data, which is used to determine 2019 insurer deductibles. Therefore, to calculate the IMARA for 2020, Treasury calculates the average deductibles for the three prior years (2019, 2018, and 2017), which are based on the direct earned premiums reported in those years for the prior calendar years (2018, 2017, and 2016, respectively).

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 rules is ambiguous as to how the IMARA should be calculated. Under § 50.4(m)(2)(i) of the Program rules, 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).¹⁴ 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.

¹³ 81 FR 18950, 18952 (April 1, 2016).

¹⁴ This language was proposed in the 2016 NPRM and included in the Program Final Rules Except Certification.

II. The Proposed Rule

A. Overview

Treasury is proposing a technical correction to 31 CFR 50.4(m)(2)(i) to clarify that the IMARA calculation is based upon direct earned premium reported “*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, and 2016.

In addition, Treasury is proposing to modify 31 CFR 50.4(m)(3) to accelerate the notification date of the IMARA, in an effort to improve administrative efficiency. The Program rules provide that, for any year, Treasury will publish the notification of the IMARA in the *Federal Register* by April 30 of that year. (The Program rules also state that if an event is certified as an act of terrorism by the Secretary before any April 30, Treasury will publish notice of the IMARA “as soon as practicable thereafter.”¹⁵) The proposed rule change described above, which directs use of data reported “*in*” as opposed to “*for*” the prior three years, will provide Treasury with additional time to make the IMARA calculation by reference to data reported in the prior three years.

This notice of proposed rulemaking therefore proposes to change the IMARA notification requirement such that, for any year, Treasury will publish the IMARA no later than December 31 of the prior year. This change will notify participating insurers of the new IMARA figure in advance of the IMARA taking effect (rather than during the year the IMARA is already in effect). The change will also provide Treasury with time to assess and respond to any late

¹⁵ 31 CFR 50.4(m)(3).

reported or corrected data in the last year. This will also alert participating insurers of potential changes in their obligations under the Program before the IMARA takes effect. Additionally, this change promotes efficient operation of the Program by the Federal Insurance Office.

As noted above, the Program rules also address situations where an act of terrorism is certified before the establishment of that year's IMARA. Because the IMARA under the proposed rule would be calculated and announced before the year begins, this provision would no longer be necessary and would be eliminated from the regulations.

Treasury seeks comment on all aspects of the proposed rule changes from interested persons and entities.

B. Description of the Proposed Rule

Treasury proposes the following changes:

- (1) In existing 31 CFR 50.4(m)(2)(i), change the word “for” to “in,” so that this subsection refers to amounts reported “*in* the three calendar years prior to the calendar year in question”;
- (2) In existing 31 CFR 50.4(m)(3), change the annual deadline for Treasury to publish the IMARA from April 30 of the year in question to December 31 of the prior year;
and
- (3) Eliminate current language in 31 CFR 50.4(m)(3) addressing the timing for publication of the IMARA in situations where the Secretary certifies an act of terrorism prior to April 30 of any year.

III. 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, if promulgated, 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 proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The 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 proposed 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 proposed 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.

For the reasons stated in the preamble, the Department of the Treasury proposes to amend 31 CFR part 50 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

* * * * *

(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: August 21, 2019

Bimal Patel

Assistant Secretary for Financial Institutions.

[FR Doc. 2019-18728 Filed: 9/5/2019 8:45 am; Publication Date: 9/6/2019]