this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Saab Aircraft AB: Docket No. FAA–2008–1044; Directorate Identifier 2008–NM–095–AD.

Comments Due Date

(a) We must receive comments by October 30, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Saab Model SAAB-Fairchild SF340A (SAAB/SF340A) and SAAB 340B airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

Several landing gear emergency extension valves have been found seized when performing checks according to the SAAB 340 Maintenance Review Board (MRB) Report, Section F (Airworthiness Limitation Section) task number 323106. The valves have seized due to lack of internal lubrication. This condition, if not corrected, could result in malfunctioning of the landing gear release during an operational emergency.

Because the valve lubrication performance is dependant on calendar time since last valve operation, SAAB has revised the check to cycle the emergency release handle 5 times and amended the interval in MRB section F from 5,000 FH [flight hours] to every 2 years.

For the reasons described above, this Airworthiness Directive (AD) requires a functional check [for discrepancies, (e.g., landing gear does not extend, does not lock in down position)] of the landing gear emergency extension valve at the newly established intervals.

Malfunction of the landing gear release could cause failure of the landing gear to extend and lock in the extended position, which could result in a gear up landing and reduced controllability of the airplane on the ground. The corrective action for any discrepancy that is found is repair using a method approved by either the FAA or the European Aviation Safety Agency (EASA) (or its delegated agent).

Actions and Compliance

(f) Unless already done, do the following actions.

(1) Within 6 months after the effective date of this AD, do a functional check of the landing gear emergency extension valve in accordance with the Accomplishment Instructions of Saab Service Bulletin 340–32–136, dated January 9, 2008. Repeat the functional check thereafter at intervals not to exceed 24 months.

(2) If any discrepancy is found during any functional check required by paragraph (f)(1) of this AD, before further flight, repair using a method approved by either the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: Although the MCAI includes a note that allows the option of the repetitive inspections to be accomplished in accordance with SAAB 340 MRB Report, Section F, Revision 6, task number 323106, this AD does not include that option. That document is not yet available.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Shahrahm Daneshmandi, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1112; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) Airworthy Product: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) Reporting Requirements: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120–0056.

Related Information

(h) Refer to MCAI EASA Airworthiness Directive 2008–0054 dated March 5, 2008, and SAAB Service Bulletin 340–32–136, dated January 9, 2008, for related information.

Issued in Renton, Washington, on September 20, 2008.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–22915 Filed 9–29–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

31 CFR Part 50

RIN 1505—AB92

Terrorism Risk Insurance Program; Cap on Annual Liability

AGENCY: Departmental Offices, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of the Treasury (''Treasury'') is issuing this proposed rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (''TRIA'' or ''the Act''), as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (''Reauthorization Act''). The Act established a temporary Terrorism Risk Insurance Program (''TRIP'' or ''Program'') under which the Federal Government would share with commercial property and casualty insurers the risk of insured losses from certified acts of terrorism. The Reauthorization Act has now extended the Program until December 31, 2014. This proposed rule is the latest in a series of regulations Treasury has issued to implement the Act. The proposed rule incorporates and implements statutory requirements in section 103(e) of the Act, as amended by the Reauthorization Act, for capping the annual liability for insured losses at $100 billion. In particular, the proposed rule describes how Treasury intends to determine the *pro rata* share of insured losses under the Program when insured losses would otherwise exceed the cap on annual liability. The rule builds upon previous rules issued by Treasury.

DATES: Written comments must be submitted on or before October 30, 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 Cap on Annual Liability Proposed 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

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. The Act authorizes Treasury to administer and implement the Program, including the issuance of regulations and procedures. The Program provides a federal backstop for insured losses from an act of terrorism. Section 103(e) of the Act gives Treasury authority to recoup federal payments made under the Program through policyholder surcharges. The Act also contains provisions designed to manage litigation arising from or relating to a certified act of terrorism.

The Program originally was to expire on December 31, 2005; however, 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. 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), extending the Program through December 31, 2014.

The Reauthorization Act, among other Program changes, revised the provisions of the Act with regard to the cap on annual liability for insured losses of $100 billion. Previously, section 103(e)(3) stated that Congress would determine the procedures for and the source of any payments for insured losses in excess of the cap. This was deleted. Instead, this section now requires 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 the cap. TRIA, as amended by the Reauthorization Act, also requires the Secretary to determine the *pro rata* share of insured losses to be paid by each insurer incurring losses under the Program when insured losses exceed the cap, and to issue regulations for carrying this out.

II. Previous Rulemaking

To assist insurers, policyholders, and other interested parties in complying with immediately applicable requirements of the Act, Treasury has issued interim guidance for reference until issuance of superseding regulation. Rules establishing general provisions implementing the Program, including key definitions, and requirements for policy disclosures and mandatory availability, can be found in Subparts A, B, and C of 31 CFR Part 50. Treasury's rules applying provisions of the Act to State residual market insurance entities and State workers' compensation funds are at Subpart D of 31 CFR Part 50. Rules setting forth procedures for filing claims for payment of the Federal share of compensation for insured losses are at Subpart F of 31 CFR Part 50. Subpart G of 31 CFR Part 50 contains rules on audit and recordkeeping requirements for insurers, while Subpart I of 31 CFR Part 50 contains Treasury's rules implementing the litigation management provisions of section 107 of the Act.

III. The Proposed Rule

This proposed rule would add a Subpart J to part 50, which comprises Treasury's regulations implementing the Act. It also proposes to amend § 50.53 of Subpart F.

A. Overview

Generally, section 103(e)(2), as amended, provides that, notwithstanding subsection (e)(1) regarding the Federal share of compensation or any other provision of Federal or State law, the Secretary shall not make any payments for any portion of insured losses in excess of the cap on annual liability of $100 billion. Furthermore, no insurer that has met its insurer deductible shall be liable for any portion of insured losses in excess of the cap. For these purposes, the Secretary determines the *pro rata* share of insured losses to be paid by each insurer incurring losses under the Program. Section 103(e)(2) further provides that no insurer may be required to make any payment for insured losses in excess of its deductible combined with its share of insured losses above its deductible. The Reauthorization Act also added a provision (Section 103(b)(3) of TRIA) requiring insurers to make a disclosure to policyholders of the existence of the $100 billion cap under subsection (e)(2).

The cap on insured losses may be reached as a result of a single act of terrorism, or as a result of multiple smaller acts. Either case would represent an unprecedented level of losses and present many difficulties in assessment and projection of insured losses. The cap's impact on the Federal government's and insurer's liabilities, based on industry-wide insured losses, involves insurance contract issues not normally encountered in the insurance market. Examining different approaches to pro rating payments of insured losses within the cap, it is apparent that no alternative eliminates the potential for inequities in how insured losses are settled, mainly due to the timing of events and the timing of loss settlements.

In developing a proposed process, Treasury is guided by its authorities provided in the Act. Treasury is attempting, within these authorities, to reduce the potential for inequitable treatment of policyholders resulting from the timing of insured losses, the location of insured losses, or the particular insurer of the policyholder, while providing a process that is relatively easily understood and that is operationally reasonable to execute, control, and audit. The proration process must be established on a going forward basis so insureds that have already received payments from their insurers would not have to return any of those payments. The process must also be flexible enough to address changing circumstances presented by subsequent events or by the development of new, more accurate information regarding insured losses.

The proposed rule describes how Treasury would initially estimate whether the cap will be exceeded, the means by which Treasury would develop and maintain estimates for determining the *pro rata* share of insured losses to be paid, the factors

that would be considered in determining a *pro rata* percentage of the insured losses that are to be paid in order to stay within the cap, and the application of the *pro rata* percentage in paying insured losses. Treasury has consulted with the National Association of Insurance Commissioners in developing this rule. Treasury seeks comment on all aspects of the proposed rule and welcomes the submission of alternatives to the proposed process for prorating insured losses when aggregate insured losses would exceed the cap on annual liability.

B. Description of the Proposed Rule

The major provisions of the proposed rule are as follows:

1. Notice to Congress (§ 50.91)

Section 103(e)(3) of the Act requires the Secretary to provide an initial notice to Congress not later than 15 days after the date of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100 billion. TRIA defines an ''act of terrorism,'' in part, as any act that is certified by the Secretary, in concurrence with the Secretary of State and the Attorney General of the United States. Treasury intends to meet this requirement within the designated time following the certification of an act of terrorism, although there may be significant challenges involved in obtaining data for such an estimate within the designated time. The first challenge could be restrictions on access to the affected areas that would hinder the ability of anyone to accurately assess losses. Additionally, from the Program's perspective, since the $100 billion cap applies only to insured losses, the distinction between estimation of insured and uninsured losses will be critical.

In determining initial estimates of insured losses, Treasury's preferred means of gathering information would be through contacting insurance industry statistical organizations such as the Property Claims Services of Insurance Services Office, Inc. To the extent that insurers are able to estimate their insured losses early on, aggregate loss information would become available through such industry sources. Supplemented with other information regarding insurer deductibles and expectations for insured losses that would emerge later, such as liability losses, this represents, we believe, the best source for an initial report as to whether the cap will be exceeded. Treasury is also exercising its own data call authority, which is further discussed in the description below for § 50.94 in the proposed rule. For the purposes of this initial reporting to Congress, however, a Treasury data call, separate from other industry efforts, may not be timely enough.

Treasury has also considered the utility of certain computer models to estimate initial insured losses. (This modeling has been developed as an industry tool for analyzing the terrorism risk for underwriting purposes.) While this may be of some value in making initial estimates, we have also been advised that the values for input parameters necessary for model accuracy for an actual terrorist event are not likely to be as readily available in the immediate aftermath as they are from natural hazard events such as hurricanes. This seems to limit the utility of this approach for purposes of the report to Congress.

Treasury may also look to Federal, state, and local sources of damage assessments in advance of any disaster response and recovery efforts. These will likely also be helpful, but, as discussed above, such overall estimates may not be refined enough for us to estimate the more limited insured losses of concern to the Program.

2. Determination of Pro Rata Share (§ 50.92)

Under the Reauthorization Act, the Secretary shall not make any payment for any portion of the amount of such insured losses that exceeds $100 billion; and no insurer that has met its deductible shall be liable for the payment of any portion of the amount of such insured losses that exceeds $100 billion. As previously noted, the timing of events and the timing of resulting loss payments have the potential for inequities that may be impossible to avoid completely. Treasury is proposing a rule that ensures fair and equal treatment of insurers, policyholders, and claimants, to the extent possible given the inequities inherent in the cap provisions of the Act and the possibility that proration may need to be implemented midway in the settlement of insured losses arising from a Program Year. Generally, Treasury's approach would be to establish any pro ration relatively conservatively when it is estimated that the cap will be reached, so that early payments are not inequitably higher than later payments, and so that, barring a subsequent act of terrorism, later refinements to the pro ration would allow additional payments to policyholders for prior settled losses. During a Program Year, until events have transpired that lead Treasury to believe that the cap could be reached, it would be our intention that no pro ration would be established.

The proposed rule includes a definition of ''*pro rata* loss percentage'' (''PRLP''). This would be the percentage determined by the Secretary to be applied against the amount that would otherwise be paid by an insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability. An insurer would apply the PRLP to compute the *pro rata* share of insured losses to be paid under an insurance policy.

Treasury has examined the issue of whether different lines of business or different types of insured losses should have different *pro rata* loss percentages applied. Given the inherent potential for inequities arising out of the timing and nature of multiple acts of terrorism that are the cause of insured losses, the difficulties in quickly estimating aggregate losses, as well as the difficulty in prioritizing certain insured losses over others, Treasury believes a single *pro rata* loss percentage should be used in determining the *pro rata* share of insured losses from all lines of business covered by the Program.

The proposed rule provides that if Treasury estimates that insured losses may exceed the cap on annual liability for a Program Year, then Treasury would determine an initial PRLP and an effective date for that PRLP. This percentage would be applied in determining insured loss payments for insured losses incurred during the subject Program Year, starting with the effective date until Treasury determines a revised PRLP. Considerations in establishing the PRLP are proposed to be: (1) Estimates of insured losses from insurance industry statistical organizations; (2) any data calls issued by Treasury; (3) expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase; (4) estimates of insured losses and expenses not included in available statistical reporting; and (5) such other factors as the Secretary considers important. Revisions to the PRLP would be based on the same considerations, as needed. Notices of the initial and any revised PRLP would be provided through the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

It will almost certainly be necessary to continue to update aggregate insured loss estimates, in light of more information regarding losses from events which have already occurred or

because of subsequent events. New and refined information may result in Treasury's determination of a new PRLP. In developing this proposed rule, Treasury contemplated including a schedule for updating estimates of aggregate insured losses. Because of the unique circumstances of any act of terrorism, we believe that it would be better to formulate a plan for updating this information when we know more about what has actually occurred.

Treasury needs information on unprorated insured losses in order to accurately determine an appropriate initial or subsequent PRLP. It is Treasury's understanding that as insured losses develop and are paid under a *pro rata* share calculation, insurer loss reserves generally will reflect the reduced payments expected to be made. For this reason, Treasury anticipates requiring, both for data call purposes discussed below, and for insurer claim submissions for the Federal share of compensation, the provision to Treasury of insured loss amount information that would reflect the unprorated amounts of both settlements and losses yet to be paid in the future.

Treasury is concerned that there could be circumstances where we estimate that the cap on annual liability will be exceeded, but there is not yet adequate knowledge of insured losses with which to determine a PRLP. Allowing payments for early insured losses to continue without proration appears to be inequitable to those coming in later, for which the *pro rata* share calculation would have to be that much more severe. Treasury is proposing in this rule that in such a circumstance it would call a brief hiatus in insurer loss payments of up to two weeks. During this time Treasury would develop a PRLP as quickly as possible. During this hiatus, insurers could still make payments, but with the understanding that the PRLP would be effective retroactively to the start of the hiatus. Any insured losses later submitted in support of an insurer's claim for the Federal share of compensation would be reviewed for compliance with the regulations pertaining to the *pro rata* share payments.

3. Application of Pro Rata Share (§ 50.93)

Treasury is proposing that the PRLP be applied by insurers prospectively on individual insured losses that have not been settled as of the effective date of a PRLP. The intention is that the process of pro ration will not retroactively require repayment of any claims already legitimately made (or agreed to be paid) to insureds for insured losses. The impracticality of recovering payments already made is generally recognized.

From the standpoint of operational ease and in the interest of equitable treatment of all insured losses once it is expected that the cap on annual liability will be reached, Treasury sees merit in applying *pro rata* sharing of insured losses whether they are within or in excess of an individual insurer's deductible. In closely examining its authorities as stipulated in the Reauthorization Act, however, Treasury has concluded that it cannot provide for *pro rata* sharing of insured losses in such a way that an insurer's liability would be limited when it has not met its deductible. The proposed rule addresses this issue.

Proposed § 50.93 directs insurers to apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses where there is not a signed settlement as of the effective date established by Treasury for the PRLP. The same procedure applies whether this is an initial PRLP or a subsequent PRLP that is superseding the prior determination. Treasury is proposing that the *pro rata* share is determined based on the final claim settlement amount that would otherwise be paid. If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid or the amount computed by applying the PRLP to the final claim settlement amount. The proposed rule refers to ''estimated or actual'' final claim settlement amounts. This recognizes that insurers may be submitting underlying claim information in support of a claim for the Federal share of compensation after making partial payments, but prior to a final adjustment of the claim.

Some insured losses, such as those associated with workers' compensation or business interruption, may involve ongoing regular payments. In these cases, the proration is still determined based on the final claim settlement amount that would otherwise be paid. In the claims procedures regulations and in the forms for insurer submissions for the Federal share of compensation that Treasury has promulgated, workers' compensation losses are required to be substantiated at the policy level. That is to say, underlying loss information on the bordereaux and reviewed by Treasury in determining the Federal share is submitted in aggregate by policy/employer rather than individual claimant/employee. In this proposed rule, Treasury proposes to continue that scheme. The application of the PRLP to determine the *pro rata* share would be against the estimated or actual unprorated loss amounts by policy (broken down by medical only, medical portion of indemnity, and indemnity portion of indemnity), following the way loss information has been required to be reported as part of the TRIP Certifications of Loss. Despite this calculation of the *pro rata* share at the policy level for purposes of reporting to Treasury, Treasury expects that insurers would pro rate payments made to individual claimants.

If an insurer that has not yet made payments in excess of its insurer deductible estimates it will exceed its deductible making payments based on the application of the PRLP, then that insurer shall apply the PRLP as of the effective date of the PRLP. If an insurer that has not yet made payments in excess of its insurer deductible estimates it will not exceed its deductible making payments based on the application of the PRLP, then that insurer may make payments on the same basis as prior to the effective date of the PRLP. This means there is no requirement to pro-rate losses. In such circumstances, whether to pro-rate as of the effective date of the PRLP is up to the insurer. If the insurer pro rates and does not exceed its deductible, then it is liable for additional, retroactive loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible. If the insurer does not pro rate, but does exceed its deductible, then it must apply the PRLP to its remaining insured losses once it makes payments equal to its insurer deductible. Once an insurer exceeds its deductible and submits a claim for the Federal share of compensation, however, Treasury's review of eligible payments associated with the underlying losses and calculations for the Federal share would be based on the application of the PRLP as if the insurer had originally been subject to paragraph (b) of this section.

4. Data Call Authority (§ 50.94)

Treasury is proposing that it may issue a data call to insurers for the submission of insured loss information. We anticipate requesting summary level information on insured losses and insurer deductible information. Such a collection of data may be necessary not only for the purposes of the cap on annual liability, but also with regard to potential recoupment. Treasury intends, to the extent possible, to rely on existing industry statistical reporting

mechanisms in making initial estimates. However, in order to estimate whether the cap on annual liability will be reached and determine an initial or subsequent PRLP, it may be necessary to have more timely detail regarding insurer deductibles and reserves for insured losses from lines of business not normally included in existing industry reporting.

It is Treasury's intention to proceed with the development of forms for the electronic submission of insurer responses to a data call, with appropriate opportunity provided for public review and comment. It has been observed that reporting similar to that required on the current TRIP Initial Notice of Loss may be sufficient for these purposes. Treasury will review this as part of its forms development process. The circumstances of a particular Program Trigger Event will likely have a significant bearing on which insurers should receive the data call and how the data should be coordinated, perhaps with the NAIC or a particular state. Additional data call guidance will be provided as necessary based on the circumstances of the particular Program Trigger Event.

5. Final Amount (§ 50.95)

As previously discussed, Treasury intends to establish, to the extent possible, pro ration of insured losses conservatively so as to not exceed the legislative cap on annual liability. The proposed rule includes provision for Treasury to determine a final PRLP that would be used for determining the *pro rata* share to be paid on all remaining insured losses as well as for being able to provide additional payments on previously settled losses and still remain within the cap. The proposed rule also proposes that there may be a need for supplementary explanation regarding how additional payments are provided on previously settled losses that would accompany the Certifications of Loss submitted by insurers for the Federal share of compensation. The proposed rule also includes a provision, consistent with the above discussion of the treatment of *pro rata* sharing in connection with insurer deductibles, that at the time of determination of a final pro ration, an insurer may still be liable for loss payments that in the aggregate bring the insurer's total loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

IV. Procedural Requirements

Executive Order 12866, ''Regulatory Planning and Review''. This rule is a significant regulatory action for purposes of Executive Order 12866, ''Regulatory Planning and Review,'' and has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act. Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. Under the Act, Treasury shall not make any payment for any portion of the amount of annual aggregate insured losses that exceed $100 billion and no insurer that has met its insurer deductible is liable for the payment of any portion of the amount of annual aggregate insured losses that exceeds $100 billion. Further, the Act requires the Secretary to determine the *pro rata* share of insured losses to be paid by each insurer and to issue regulations for determining the *pro rata* share of insured losses under the Program. Accordingly, any economic impact associated with the proposed rule flows from the Act and not the proposed rule. A regulatory flexibility analysis is thus not required.

Paperwork Reduction Act. The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3507(d).

Organizations and individuals desiring to submit comments concerning the collection of information in the proposed rule should direct them to: Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, or by e-mail to *Alexander_T._Hunt@omb.eop.gov*. A copy of the comments should also be sent to Treasury at the addresses previously specified. Comments on the collection of information should be received by December 1, 2008.

Treasury specifically invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of Treasury, and whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the collections of information (see below); (c) ways to enhance the quality, utility, and clarity of the information collection; (d) ways to minimize the burden of the information collection, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information.

The forms to be prescribed by Treasury for the data call pursuant to the authority in § 50.94 to collect information to ascertain the aggregate amount of insured losses will require information readily derived from existing normal industry internal and external reporting. Treasury may issue data calls to insurers to make initial estimates of aggregate losses where available industry statistical information is not specific enough, and to further refine the information needed to determine the PRLP. The number of respondents to such a data call is not expected to exceed 200 insurers. The data to be obtained in the immediate aftermath of certification of an act of terrorism would include the insurers' total expected losses and estimated insurer deductibles. Subsequent data calls to refine the information would include catastrophe code, line of business, losses paid, allocated loss adjustment expenses paid, case reserves, incurred but not reported reserves as well as the total expected loss (unprorated) and insurer deductible data. Treasury estimates that an insurer will require 5 hours, on average, to assemble data and respond to the Treasury request. The estimated total burden would therefore be 1,000 hours (200 insurers × 5 hours). At a blended, fully loaded hourly rate of $85.00, the cost would $85,000. (Note, the data call forms and submission would, as appropriate, also be utilized to obtain aggregate insured loss data needed for making recoupment determinations and notices required by the Act).

In the event of imposition of a PRLP, it will be necessary to determine insurer compliance when the Treasury is processing insurer claims for payment of the Federal share of compensation. This would be accomplished by revision to the currently approved Treasury form TRIP 02C, revised April 2006 (OMB 1505–0200, expiration December 31, 2010). This form, the ''Bordereau'' or ''Schedule C'' is submitted in support of the insurer's certification of loss (see 31 CFR 50.53) and provides detailed information about individual underlying claims. The revised form would require the addition of the settlement date of an underlying claim, the total unprorated amount of the loss, and the date of the latest payment on the claim. These are data that are normally in the insurer's own file and their reporting and recordkeeping are estimated to not represent any measurable additional reporting or recordkeeping burden.

Executive Order 13132, ''Federalism.'' The proposed rule may have federalism implications to the extent it deals with

the making of payments by insurers to their policyholders under contracts of insurance, which is ordinarily regulated under State insurance law. However, TRIA established a temporary Federal program that is national in scope and significance. Section 106 of TRIA preserves the jurisdiction or regulatory authority of State insurance commissioners or similar offices, except as specifically provided in TRIA. Section 103(e)(2) requires Treasury to issue regulations for determining the *pro rata* share of insured losses under the Program when insured losses exceed $100 billion.

Treasury consulted with the National Association of Insurance Commissioners early in the process of formulating this proposed rule. State insurance commissioners who are members of the NAIC Terrorism Insurance Working Group were given an opportunity to submit comments, and a few minor and technical comments were received and considered by Treasury. The NAIC and State insurance commissioners will have a further opportunity to comment on this proposed rule.

The provision in the proposed rule (Sec. 50.92(e)) where Treasury would call for a hiatus in payments by insurers in circumstances where the cap on annual liability may be exceeded, but an appropriate PRLP cannot yet be determined, could potentially conflict with State insurance laws prescribing fixed periods for insurers to pay claims. However, Treasury believes the impact is limited in the proposed rule because the period of the hiatus is brief (up to two weeks), and it would apply shortly after an act of terrorism occurs. Treasury has concluded that a brief hiatus is necessary to carry out the purpose of the statute to establish shares of insured losses on a *pro rata* basis by avoiding the inequity of allowing early claims to be paid in full before a PRLP can be determined.

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 proposed to be 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 and Pub. L. 110–160, 121 Stat. 1839 (15 U.S.C. 6701 note).

2. Subpart J is added to read as follows:

Subpart J—Cap on Annual Liability

Sec.

§ 50.90 Cap on annual liability.

Pursuant to Section 103 of the Act, if the aggregate insured losses exceed $100,000,000,000 during any Program Year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds $100,000,000,000;

(b) 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; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.91 Notice to Congress.

Pursuant to Section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed $100,000,000,000 for the Program Year in which the event occurs. Such initial estimate shall be based on insured loss amounts as compiled by insurance industry statistical organizations and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed $100,000,000,000 during any Program Year.

§ 50.92 Determination of pro rata share.

(a) *Pro rata Loss Percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under Section 103(e)(2)(A) of the Act.

(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a Program Year, then Treasury will determine an initial PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject Program Year, as specified in § 50.93, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.94);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the **Federal Register**, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a Program Year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and calling a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

§ 50.93 Application of pro rata share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses where there is not a signed settlement as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro*

rata share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid. If partial payments have already been made as of the effective date of the PRLP, then the *pro rata* share for that loss is the greater of the amount already paid or the amount computed by applying the PRLP to the estimated or actual final claim settlement amount.

(b) If an insurer that has not yet made payments in excess of its insurer deductible estimates that it will exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer shall apply the PRLP as of the effective date specified in § 50.92(b).

(c) If an insurer that has not yet made payments in excess of its insurer deductible estimates that it will not exceed its insurer deductible making payments based on the application of the PRLP to its insured losses, then the insurer may make payments on the same basis as prior to the effective date of the PRLP. If such insurer thereafter reaches its insurer deductible, then the insurer shall apply the PRLP to its remaining insured losses. When such an insurer submits a claim for the Federal share of compensation, the amount of the insurer's losses will be deemed to be the amount it would have paid if it had applied the PRLP as of the effective date, and the Federal share of compensation will be calculated on that amount. However, an insurer may request an exception if it can demonstrate that its estimate was invalidated as a result of insured losses from a subsequent act of terrorism.

§ 50.94 Data call authority.

For the purpose of determining initial or recalculated PRLPs Treasury may issue a data call to insurers for insured loss information. Submission of data in response to a data call shall be on a form promulgated by Treasury.

§ 50.95 Final amount.

(a) Treasury shall determine if, as a final pro ration, remaining insured loss payments, as well as adjustments to previous insured loss payments, can be made by insurers based on an adjusted PRLP, and aggregate insured losses still remain within the cap on annual liability. In such a circumstance, Treasury will notify insurers as to the final PRLP and its application to insured losses.

(b) If paragraph (a) of this section applies, Treasury may require, as part of the insurer submission for the Federal share of compensation for insured losses, supplementary explanation regarding how additional payments will be provided on previously settled insured losses.

(c) An insurer that has pro rated its insured losses, but that has not met its insurer deductible, remains liable for loss payments that in the aggregate bring the insurer's total insured loss payments up to an amount equal to the lesser of its insured losses without proration or its insurer deductible.

§ 50.53 [Amended]

3. Section 50.53 is amended by adding paragraph (b)(5) to read as follows:

* * * * *

(b) * * *

(5) A certification that if Treasury has determined a *Pro rata* Loss Percentage (PRLP) (see § 50.92), the insurer has complied with applying the PRLP to insured loss payments, where required.

* * * * *

David G. Nason,

Assistant Secretary (Financial Institutions).

[FR Doc. E8–22940 Filed 9–29–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2008–0440]

RIN 1625–AA87

Security Zone; Coast Guard Base San Juan, San Juan Harbor, Puerto Rico

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a permanent security zone in the vicinity of the Coast Guard Base in San Juan, Puerto Rico. The security zone is needed for national security reasons to protect the public and the Coast Guard base from potential subversive acts. The proposed rule would exclude entry into the security zone by all vessels and personnel without permission of the U.S. Coast Guard Captain of the Port San Juan.

DATES: Comments and related material must reach the Coast Guard on or before December 1, 2008.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2008–0440 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) Online: *http://www.regulations.gov.*

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call Ensign Rachael Love of Sector San Juan, Prevention Operations Department at (787) 289–2071. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's ''Privacy Act'' paragraph below.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–0440), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger