

mutuals), the interim final rule suggested other methods by which adjustments could be made by the insurer to calculate its DEP. Specific methods were suggested in the interim final rule for county or town mutual insurers, eligible surplus line insurers, and federally approved insurers.

Included Versus Excluded Lines of Coverage in General

Several commenters were uncertain about whether the interim final rule's list of commercial lines as reported on the specified lines of Statutory Page 14 was exclusive or merely illustrative. Their uncertainty appears to arise from use of the word "includes" in section 50.5(l) of the interim final rule that property and casualty insurance ("includes commercial lines within the following lines of insurance.") These commenters suggested that Treasury clarify whether it intended for the list to be exclusive, or identify those lines of business that are excluded.

As previously noted, Treasury consulted with the NAIC and others concerning the definition of commercial property and casualty insurance. Finding no uniform or consistent definition of the term, Treasury determined that the NAIC's Statutory Page 14, provided the best available point of reference—not only for identifying the lines of coverage for the Program, but also for guidance in determining an insurer's DEP for those lines of coverage. Treasury intended that the list of specified lines on Statutory Page 14 would be exclusive, and premiums reported on other lines would not be part of the Program. The final rule revises the previous language to clarify this.

In its comment on the interim final rule, the NAIC suggested Treasury should add the following language from the Act: "* * * or any other type of crop or livestock insurance that is privately issued or reinsured" to section 50.5(l)(2)(i) of the interim final rule. The NAIC commented that such an addition would prevent any uncertainty concerning the treatment of crop or livestock coverage that is not part of the Program.

In developing the interim final rule, Treasury understood based on available information that privately issued or reinsured crop or livestock insurance was reported under Multiple Peril Crop insurance on Line 2.2 of Statutory Page 14. It is now Treasury's understanding, based on additional information from the NAIC, that privately issued or reinsured crop or livestock insurance is generally reported as Allied Lines insurance on Line 2.1 of Statutory Page 14. Therefore, in the final rule, Treasury

has added the specific statutory language and the appropriate reporting lines of Statutory Page 14 to section 50.5(l)(2)(i) of the final rule.

The Act and interim final rule exclude Federal flood insurance which is a line of single peril natural disaster insurance. Similarly, the interim final rule excluded earthquake insurance reported on Statutory Page 14. Treasury received no comments on the interim final rule regarding the treatment of any single peril natural disaster insurance. However, in light of information subsequently received in response to Treasury's proposed rule concerning state residual market insurance entities, Treasury is considering issuing a proposed rule specifically requesting comment on the inclusion or exclusion in the Program definition of commercial property and casualty insurance of other single peril natural disaster insurance, such as stand alone, single peril wind insurance, if reported on included lines of Statutory Page 14.

Personal Lines

One commenter asserted that Treasury's determination that commercial coverage is incidental if its applicable premium is less than 25 percent of a hybrid personal/commercial lines policy premium would have adverse effects, suggesting that this could cause insurers to force incidental coverages off such personal policies, such as Homeowners insurance. Others commented that the incidental rule should only be used as a threshold calculation, or that insurers should be allowed to allocate personal/commercial hybrid policy premiums according to their normal business methods and procedures. One commenter contended that Homeowners policies should not be included in the Program regardless of the percentage of commercial premium, and that allocation of commercial/personal premium would not be appropriate for Farmowners or Farm Properties policies since they are both considered by some states to be commercial lines.

As discussed above, Treasury has suggested methods for the allocation of commercial portions of premiums in hybrid policies in an attempt to aid insurers by simplifying the adjustment and calculation of an insurer's DEP. If the appropriate premium was included in the DEP and the other required conditions for Federal payment are met, commercial portions of hybrid policies are covered by the Program. The 25 percent incidental provision was included in the interim final rule by Treasury to provide a threshold, so that those insurers that did not want to

calculate an actual allocation of premiums on small incidental amounts of coverage, and did not intend to perfect their right to recover Federal payment on claims paid on such incidental commercial coverage, could then exclude those premiums from their DEP calculation if they wished to do so. In order to clarify this in the final rule, and to make it clear that an insurer can choose to allocate premiums below that amount, Treasury has modified the language in section 50.5(d)(1)(i-iv) of the interim final rule.

Personal Versus Commercial Lines

Four commenters asked for clarification with regard to whether coverage for one to four family rental units is personal or commercial insurance. One pointed out that such coverage is generally written under a Dwelling Properties insurance policy (which is considered to be a personal line). However, in other situations, under four family rental units are written as a commercial coverage. Treasury's designation in section 50.5(l)(1) of the interim final rule of the specific lines of commercial coverage from Statutory Page 14 was made, in part, to provide greater clarity for insurers in cases where various States may not treat certain types of coverage consistently as commercial coverage. In general, it is our understanding that premium income for one to four family rental unit insurance coverage generated from policies insuring property owned for business purposes (e.g. to generate income for the property owner) is reported on Lines 1 (Fire) 2.1 (Allied Lines) and 17 (Other Liability) of Statutory Page 14. Based on section 50.5(l)(1) of the final rule, such insurance coverage would be considered commercial property and casualty insurance coverage that is included in the Program. Treasury also addressed the issue of personal lines in the context of adjustments to DEP in section 50.5(d)(1) of the interim final rule and through adjustments to that section in the final rule. To the extent that one to four family rental units have a personal coverage component, the suggested methods of adjusting and calculating the appropriate DEP may be used by an insurer.

Another commenter stated that farm residences should be considered commercial. For purposes of the Program, Treasury does not agree, but considers any owner occupied residence to be basically a personal coverage. Therefore, where a farm residence is covered in a hybrid farm policy, the suggested methods of adjusting and