

2002); 67 FR 78864 (Dec. 18, 2002); 68 FR 4544 (Jan. 29, 2003); 68 FR 15039 (Mar. 27, 2003)]. The interim guidances addressed several issues requiring clarification of immediately applicable provisions, including provisions dealing with statutory disclosure obligations of insurers; requirements to make available terrorism risk insurance; the meaning of direct earned premium for commercial property and casualty insurance; categories of insurers required to participate in the Program; and the scope of the term insured loss under the Act.

In addition to interim guidance, Treasury has published two interim final rules and a proposed rule that have now been issued as final rules. Treasury published the first regulation implementing the Act on February 28, 2003 (68 FR 9804) as an interim final rule. That interim final rule was revised and published as a final regulation on July 11, 2003 (68 FR 41250). Now Subpart A of part 50 in Title 31 of the Code of Federal Regulations, this rulemaking covers the purpose and scope of the Program, key definitions and certain general provisions. A technical revision to the final rule dealing with the definition of direct earned premium was subsequently published on August 13, 2003 (68 FR 48280).

On April 18, 2002 (68 FR 19302) Treasury published a second interim final rule. Among other things, this rule dealt with requirements governing disclosures that insurers must make to policyholders as a condition for federal payment under the Act and requirements that insurers make available terrorism coverage in their commercial property and casualty insurance policies. The interim final rule created new Subparts B and C of 31 CFR part 50. The interim final rule was revised and published as a final rule on October 17, 2003 (68 FR 59720).

Finally, Treasury published a proposed rule on April 18, 2003 to address issues involving State residual market insurance entities and State workers compensation funds as required by section 103(d)(1) of the Act (68 FR 19309). The proposed rule clarified characteristics of a residual market mechanism that define it as an "insurer", established guidelines for computing "direct earned premium" and continued the waiver of the Act's requirements related to disclosure. The proposed rule was revised and published as a final rule on October 17, 2003 (68 FR 59715). The final rule made minor revisions to the proposed rule and set forth disclosure requirements for residual market mechanisms.

III. The Proposed Rule

This proposed rule would add Subparts F and G to Part 50, which comprises Treasury's regulations implementing the Act. It also proposes to amend the definition of "insured loss" in § 50.5(e) of Subpart A.

A. Overview

Section 103(a)(2) of the Act requires the Secretary of the Treasury to administer the Program and pay the Federal share of compensation for insured losses. The proposed rule would establish requirements for insurers to follow in obtaining payment of the Federal share of compensation for insured losses from a terrorist event. The proposed rule is designed to reflect best practices of reinsurers, where applicable, in the context of the Act's text, goals and purposes. In general, the proposed rule describes what is payable to insurers as the Federal share of compensation and then follows the sequence of the process for paying reinsurance claims. Essentially, the process involves gathering information about insured losses of insurers as defined by the Act; requiring proof, or certification, that an insurer has met the requirements of the Act as a condition to payment of the Federal share; and making payment to insurers for the Federal share of compensation for their insured losses. The proposed rule is modeled on customary business practices and procedures of the reinsurance industry while implementing the statutory requirements of the Act. Treasury seeks comment on all aspects of the proposed rule from interested persons and entities.

In outlining proposed requirements for insurers to obtain payment for insured losses, Treasury seeks to establish operational procedures that emulate, as appropriate, the best practices of a reinsurer. In this proposed rule, Treasury's goal is to be able to respond quickly to insurer claims for payment while maintaining appropriate financial controls so that taxpayer funds are protected. To the extent possible, the information that will be required from insurers already exists as part of their current process for administering and managing insurance claims. In certain instances, however, the Act requires certifications of insurer actions that may be different from customary industry business practices. It is Treasury's objective to obtain the information and documentation needed to administer the Program, while avoiding undue burdens on insurers.

The proposed rule seeks to clarify the amount of the Federal share of compensation payable by Treasury and establish certain basic operational requirements to implement payment. Accordingly, the previous definition of "insured loss" is amended to facilitate clarification of items compensable as part of the Federal share. In addition to this proposed rulemaking, more detailed operating procedures will be developed as required. Such procedures will be posted on the Treasury Web site <http://www.Treasury.gov/trip>. For the present time, Treasury is concentrating on regulations that are important to the initial and supplementary reporting and certification of insured losses and the filing of claims for payment of the Federal share of compensation. This is being done so that Treasury and insurers can proceed expeditiously should a certified act of terrorism occur. There are other issues, typically those arising at later stages of the claims payment process, that are not addressed in the proposed rule. For example, payment priorities when aggregate losses constituting the Federal share of compensation approach the statutory maximum of \$100 billion are not included as part of this rulemaking. These and other issues will be the subject of subsequent rulemaking.

B. Description of Proposed Rule

The major provisions of the proposed rule are as follows:

1. *The Federal Share of Compensation.* The proposed rule generally outlines the Act's requirements and conditions for federal payment. A critical component of the calculation of the Federal share of compensation is the amount of insured losses of an insurer. The proposed rule thus clarifies elements of insured losses that are compensable by amending the current definition of "insured loss" in § 50.5(e). Following customary business practices in the insurance industry, Treasury is proposing that loss adjustment expenses allocable to a specific underlying loss be payable as part of insured losses. Treasury has not included losses in excess of policy limits (known commonly as XPL) as insured losses. However, comments on why the Federal Government should consider including XPL losses are solicited by Treasury. Since the Act specifically excludes compensation for punitive or exemplary damages, these are also not included as insured loss items.

The Federal share of compensation payable to an insurer under the Program is described by the proposed rule as 90 percent of that portion of the insurer's