

insured losses that exceed its insurer deductible during a Program Year, subject to specified adjustments and the cap of \$100 billion as provided in the Act. The proposed rule stipulates several adjustments in calculating the Federal share of compensation. First, the proposed rule reduces aggregate insured losses by amounts recovered by insurers for salvage and subrogation. Treasury expects that as normal good business practice, insurers will pursue salvage and subrogation recoveries. The proposed rule sets forth that the amount of insured losses upon which the Federal share of compensation is calculated be reduced by such recoveries. The benefits of insurer recoveries for salvage and subrogation thus inure to both the insurer and to the Program.

The proposed rule also specifies two other adjustments that will be made to reduce the Federal share of compensation otherwise due for the insured losses. The Act requires that the Federal share of compensation for insured losses be reduced by any duplicate amount of compensation otherwise provided by the Federal Government for those insured losses. The Act recognizes that insurers may have other sources of recovery for their insured losses, particularly reinsurance agreements. Should the amount of an insurer's Federal share of compensation from the Program and the amount of recoveries from other sources exceed the aggregate amount of its insured losses in a Program Year, then any excess recovery must be returned to Treasury. Excluded from this requirement are recoveries from a reinsurer pursuant to an agreement whereby an insurer's obligation to repay its reinsurer takes priority over its obligation to repay Treasury.

**2. Information Gathering.** The next stage of the claims process under the proposed rule involves the submission of information about insured losses so that Treasury can determine the extent of its obligation to pay individual insurers under the Act.

**a. Initial Notice.** As the "payer" of Federal compensation for insured losses from acts of terrorism, Treasury is proposing an early notification requirement when an insurer obtains information indicating its insured losses will exceed 50% of its insurer deductible as defined by the Act. At that time Treasury expects the insurer to submit, on a form prescribed by Treasury, estimates of aggregate losses for the Program Year, its insurer deductible and the Federal share of aggregate losses, as well as to designate the person who will make required

certifications and receive Federal payments. Such information will assist in anticipating funding and operational requirements. Because the insurer deductible applies collectively to all insurers in an affiliated group, the notice must include the designation of a single insurance entity to coordinate the submission of required reports and documentation (including the Initial Notice), make required certifications and receive Federal payments on behalf of the affiliated group.

**b. Loss Reporting.** The proposed rule addresses the type of loss information that will be required to document insured losses when an insurer seeks reimbursement from Treasury for the Federal share of compensation. An Initial Certification of Loss, on a form prescribed by Treasury, is required when insured losses first exceed the insurer's deductible. If the insurer sustains ongoing, additional insured losses, periodic Supplementary Certifications of Loss, on a form prescribed by Treasury, must be submitted. These Certifications of Loss will be used by Treasury to assess payment eligibility for the Federal share of compensation and compliance with the Act's prerequisites for payment.

**(i) Loss Bordereau.** The primary vehicle for gathering information about the insured losses of an insurer is a summary report of loss data commonly known in the reinsurance industry as a "bordereau". A bordereau is a management report of basic information about an insurer's underlying claims that, in the aggregate, constitute the insured losses of the insurer. The bordereau is used within the reinsurance industry to track insured losses and otherwise establish the reinsurer's obligation to pay under a reinsurance agreement. The proposed rule would require insurers to provide Treasury with a bordereau that identifies insured losses by Program Year, by industry catastrophe code and by line of business. If an industry catastrophe code is not issued, Treasury will issue a code for insurer use. It is Treasury's intent to coordinate this code with appropriate industry reporting organizations.

In the future, Treasury will issue operating procedures and a prescribed format for the bordereau in its implementation of these regulations. For each underlying claim, Treasury contemplates the submission of information that is typical of a reinsurer's requirements. Such basic information will allow Treasury to expeditiously handle and provide payment for claims under the Program. Certain data will be sought for claim

identification and coverage determination, such as claim number, insured name, state code for the location of the loss, date of loss, policy effective date and length of term. Other data will assist in the assessment of the insurer's claim, such as policy limits. And finally, certain data are simply basic to the insurer's claim, such as the loss and allocated loss adjustment expenses paid, amounts reserved for those expenses and amounts recovered through salvage and subrogation.

**(ii) Other Information.** The forms to be prescribed by Treasury will also seek loss-related information that is required by specific provisions of the Act. As previously noted, section 103(g)(2) of the Act recognizes that insurers may have other reinsurance recoveries for their insured losses. However, the Act requires that the Federal share of compensation from Treasury and amounts recovered from other sources cannot exceed the aggregate amount of the insurer's insured losses in any Program Year. Thus, Treasury will require insurers to indicate on the bordereau whether an underlying claim could or does have other reinsurance recoverable. As part of the loss certification and bordereau information reported, an insurer would also report total reinsurance recoveries from other sources. This will provide the Treasury with an early notification that other reinsurance exists.

Section 107(a)(5) of the Act provides that punitive damage amounts may not be included as insured losses. Thus, Treasury will require such amounts to be reported with an underlying claim on the bordereau for appropriate adjustment of the amount claimed from the Program.

Finally, section 103(e)(1)(B) of the Act requires the reduction of the Federal share of compensation for insured losses under the Program by the amounts provided by the Federal Government through any other program for those same losses. Accordingly, insurers will be required to inquire of each of their claimants whether or not the claimant received any duplicate recovery from any other Federal source and to report that amount on the bordereau with the underlying claim.

**3. Compliance Certifications.** The proposed rule also addresses various written certifications the Act requires as a condition for payment of the Federal share. Specific statements certifying actions by the insurer as required by the Act will be included as part of each Certification of Loss. Section 103(b)(2) of the Act states that no payment may be made to an insurer for a covered insured loss unless "the insurer