

provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program.” This requirement has been addressed in the previously issued Treasury regulations at §§ 50.10 through 50.19 and will be a formal requirement in submitting a claim for the Federal share of compensation for an insured loss. Treasury anticipates that an executive officer of the insurer will provide this written certification for all underlying claims submitted on the bordereau, both with the Initial Certification of Loss and with any Supplementary Certifications of Loss.

Section 103(c) of the Act also requires that through December 31, 2004, an entity meeting the definition of an insurer under this Program “(A) shall make available, in all of its commercial property and casualty insurance policies, coverage for insured losses; and (B) shall make available property and casualty insurance coverage for insured losses that does not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism”. This requirement has also been addressed in the previously issued Treasury regulations at §§ 50.20 through 50.24. The Initial and each Supplementary Certification of Loss will include a certification that this availability requirement has been met. Although this is not a statutory condition for payment, Treasury believes it is necessary to effectively administer and implement the Program.

Finally, the Act requires that insurers absorb a specified level of insured losses, or an insurer deductible, before receiving reimbursement for the Federal share of compensation for insured losses. To facilitate the administration of this provision, the Initial Certification of Loss requires an insurer to certify the amount of its direct earned premium, along with the calculation of its insurer deductible. The proposed rule provides that, at the option of the insurer, this statement and supporting documentation can be submitted along with the Initial Notice of Insured Loss instead of being provided in conjunction with the Initial Certification of Loss. This is allowed so that the amount of the insurer's deductible can be on file with the Program to expedite the processing of the insurer's Initial Certification of Loss. Treasury will prescribe a schedule or attachment to the Initial Notice of Insured Loss and the Initial Certification of Loss forms for the calculation and certification by an insurer of its direct earned premium and

resulting insurer deductible based on its reporting to the NAIC, or as otherwise appropriately reported.

4. *Paying the Federal Share.* The final stage in the claim process addressed by Treasury in the proposed rule is to make payment as provided by the Act. Once again, the proposed rule generally follows payment practices and procedures used in the reinsurance industry.

a. *Payment Process.* Treasury is proposing that it will, upon receiving the required documentation, promptly provide payment. If Treasury makes payments before the total amount of insured losses are known, such payments will be subject later to adjustment based on any overpayment or underpayment. If the total amount of insured losses to be paid by the insurer or the amount of Federal compensation payable by Treasury has not been finally determined when the Initial Certification of Loss has been filed, the normal procedure to be followed is that the insurer will file Supplementary Certifications of Loss on a monthly basis. If monthly reporting is inappropriate in a particular case, then Treasury may determine a more suitable schedule to be worked out with the insurer. In either situation, on the basis of each Supplementary Certification of Loss thereafter, Treasury or the insurer, as the case may be, shall pay the balance due. It is proposed that any overpayment to an insurer will either be offset from future payments or due to Treasury within 45 days of the reporting of the overpayment.

Because the Act requires insurance entities within an affiliated group to be treated as a single entity in determining the insurer deductible, Treasury is proposing that all payments will be made to a single insurance entity within an affiliated group. This entity will be identified by the affiliated group and designated on the Initial Notice of Loss. The proposed rule also requires that insurers within the affiliated group assign their rights to payment from Treasury to the single insurance entity. Failure to make such assignment may be grounds for Treasury withholding an affiliate insurer's share of Federal compensation under the Program.

b. *Audits and Records.* If a certified act of terrorism occurs, it will be the objective of the Treasury to reimburse insurers according to the Act as soon as possible following receipt of the Initial Certification of Loss and supporting documentation. The proposed rule requires insurers to retain all records and files pertaining to the handling and settlement of claims, including electronic documents and data, for

subsequent financial and claims audits. This is because Treasury and/or its appointed designee(s) will need to have access to pertinent books, files, agreements and records which support the Certifications of Loss previously submitted. Insurer records should be retained for a minimum of three years following the conclusion of the policy year for premium information and for a minimum of five years following the final adjustment of each individual claim.

c. *Fraud and Civil Penalties.* One of the conditions for Federal payment under section 103(b) of the Act is that the insurer “processes the claim for the insured loss in accordance with appropriate business practices, and any reasonable procedures that the Secretary may prescribe.” The proposed rule provides that Treasury may deny eligibility for payment of the Federal share of insured losses should an insurer intentionally conceal or misrepresent any material fact or circumstance, engage in fraudulent conduct, or make false statements relating to participation under the Act. Fines, civil penalties and imprisonment under applicable Federal laws may also apply.

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. Treasury is required to pay the Federal share of compensation to insurers for insured losses in accordance with the Act. A condition of Federal payment is that the insurer must submit to Treasury, in accordance with procedures established by Treasury, a claim for payment and certain certifications. The proposed rule seeks to emulate loss reporting practices in the reinsurance industry, which insurers already follow in order to get payment for reinsurance, thus minimizing the impact on all insurers. The Act itself requires all insurers receiving direct earned premium for any type of property and casualty insurance, as defined in the Act, to participate in the Program. This includes all insurers regardless of size or sophistication. The Act also defines property and casualty insurance to mean commercial lines