

their position through written submissions to Treasury and, in Treasury's discretion, through informal oral presentation.

Published elsewhere in this separate part of the **Federal Register** is a notice of proposed rulemaking in which Treasury solicits comment on a pro rata allocation method for control determinations under section 102(3)(C) of the Act, similar to the pro rata method under consideration for controlling insurers under section 102(3)(A), in situations in which multiple insurers each provide 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and in the interim final rule. The pro rata approach under consideration by Treasury would treat each insurer on a standalone basis for Program purposes such as calculation of direct earned premiums and the insurer deductible if no insurer provides 25 percent or more of the capital of a stock insurer, policyholder surplus of a mutual insurer or corporate capital of other entities that meet the definition of insurer under the Act and the Program.

At a later date, Treasury will be issuing claims procedures. In accordance with the consolidated treatment of direct earned premiums among insurer affiliates, Treasury anticipates that the controlling insurer will be the insurer that will be required to file any claim with Treasury for federal payment under the Program and that this insurer will receive the federal payment that is to be distributed within the consolidated insurer group in accordance with distribution of risk within the consolidated insurer group. Elsewhere in this separate part of the **Federal Register**, Treasury solicits comments on various means to ensure the prompt distribution of the federal payment as appropriate to ensure that the purposes of the Program are not thwarted or evaded, and that the ultimate risk bearing entities are treated in an equitable manner, within the Act's requirements.

*C. What is the Scope of Insurance Coverage Under the Program? ("Insured Loss", "Property and Casualty Insurance", "Direct Earned Premium" and "Insurer Deductible")*

1. "Insured Loss"

The definition of "insured loss" in the interim final rule incorporates the statutory definition in section 102(5) supplemented by the guidance concerning scope of the term "insured loss" that is contained in Interim

Guidance II and Interim Guidance III. Section 102(5) of the Act defines insured loss to mean any loss resulting from a certified "act of terrorism" covered by primary or excess "property and casualty insurance," that is issued by an "insurer," if such loss:

- "Occurs within the United States," or
- Occurs to an "air carrier"; a U.S. flag vessel or a vessel "based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States, regardless of where the loss occurs," or
- Occurs "at the premises of any United States mission."

In general, if the property and casualty insurance coverage is provided within the geographic and other statutory parameters of the definition of "insured loss" in the Act as described above, and is provided by an "insurer" as defined in section 102(6) of the Act (whether or not the insurer is non-U.S. based or owned), then such losses will be covered by the Program, subject to the conditions for payment and other requirements of the Act. However, if insurance coverage is provided by an entity that is not an "insurer" under the Act, then, even if a loss occurs within the United States, or otherwise meets the definitional parameters of "insured loss," e.g. occurs to an air carrier or vessel or mission as defined in the Act, the loss would not be covered by the Program. In addition, if insurance is provided by a U.S. insurer, but the loss does not fall within the definition of "insured loss," for example, it occurs on foreign soil and not to a U.S. mission or covered air carrier or vessel, then the loss would not be covered by the Program. Section 102(5)(A) provides that "insured losses" means *any* loss resulting from a certified act of terrorism and covered by primary or excess property and casualty insurance issued by an insurer if such loss occurs *within* the United States.

As described in Interim Guidance III, insured losses under section 102(5)(B) are only those losses that are *incurred* by covered air carriers or vessels, if the insured loss occurs beyond the geographic boundaries of the United States as described in Section 102(5)(A). Losses that are incurred by covered air carriers or vessels would include losses covered by insurance coverage provided to those entities (for example, property insurance coverage and liability coverage). Not included under section 102(5)(B) are losses that are not incurred by covered air carriers or vessels, such as losses covered by third party insurance contracts that are separate

from the insurance coverage provided to covered air carriers or vessels.

2. "Property and Casualty Insurance"

Section 102(12) of the Act defines "property and casualty insurance" to mean commercial lines of property and casualty insurance. The statutory definition expressly *includes* "excess insurance, workers compensation insurance and surety insurance." In addition, the Act specifically *excludes* (i) federal crop insurance issued or reinsured under the Federal Crop Insurance Act or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance as defined in the Homeowners Protection Act of 1998 or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968; and (vii) reinsurance or retrocessional reinsurance.

Insurance is generally regulated by State law in the United States. There is no uniform or consistent definition of "commercial property and casualty insurance" among the States. In some States, a line of insurance may be considered commercial and in other States the same line of insurance is considered personal. However, as Program administrator, Treasury must designate types or lines of commercial property and casualty insurance on which direct earned premiums and insurer deductibles are to be calculated and for which federal payments will be made for "insured losses" under the Program. Direct earned premiums received by insurers for commercial property and casualty insurance under the Program are the basis for the Program's statutory reinsurance structure, for other terms and for federal payments. In developing a definition of property and casualty insurance for purposes of administering and implementing the Program, Treasury considered the statutory definition, the Program structure, and effective administration of the Program. In this regard, Treasury also consulted with the NAIC and others regarding State law and premium reports filed with the NAIC.

The interim final rule defines the scope of commercial property and casualty insurance for purposes of the Program to include commercial property and casualty insurance, including those lines of insurance expressly included in section 102(12) of the Act and excluding