

those lines of insurance expressly excluded by the same statutory definition. Treasury's interim final rule incorporates the suggested guidance in Interim Guidance I that commercial lines within the following lines of insurance coverage that are reported on the NAIC Annual Statement of the Exhibit of Premiums and Losses—commonly known as Statutory Page 14 are included in the Program: Line 1—Fire; Line 2.1—Allied Lines; Line 3—Farmowners Multiple Peril; Line 5.1—Commercial Multiple Peril (non-liability portion); Line 5.2—Commercial Multiple Peril (liability portion); Line 8—Ocean Marine; Line 9—Inland Marine; Line 16—Workers' Compensation; Line 17—Other Liability; Line 18—Products Liability; Line 19.3—Commercial Auto No-Fault (personal injury protection); Line 19.4—Other Commercial Auto Liability; Line 21.2—Commercial Auto Physical Damage; Line 22—Aircraft (all perils); Line 24—Surety; Line 26—Burglary and Theft; and Line 27—Boiler and Machinery.

The interim final rule also clarifies that premium information on such lines of Statutory Page 14 should only be included in calculating an insurer's direct earned premium and insurer deductible to the extent that coverage is provided for commercial property and casualty exposures. In other words, personal insurance that is reported on the specified covered lines of Statutory Page 14 should be excluded from an insurer's calculation of its direct earned premium and insurer deductible. In making that determination for purposes of the Program, insurers may consider insurance coverage primarily designed to cover personal, family or household purposes to be personal insurance and, therefore, not covered by the Program. Personal insurance policies that include incidental coverage for commercial purposes would be considered to be primarily personal policies. For purposes of the Program, as reflected in this interim final rule, Treasury considers incidental commercial coverage to exist where less than 25 percent of total premium is attributable to commercial coverage.

In contrast, commercial property and casualty insurance generally is designed to cover the commercial interests of business, civic, not-for-profit or governmental entities, or other similar individuals, organizations, or professional practices. In cases where an insurance policy covers both commercial and personal exposures, and is not primarily a personal policy, insurers should allocate the proportion of risk between commercial and personal components in determining

what portion of the policy falls under the Program. In suggesting this allocation, Treasury is not establishing a new reporting requirement at this time, but is suggesting a method by which insurers may calculate their deductibles and for Treasury to verify any claims under the Program.

Insurers that do not report premiums to the NAIC on Statutory Page 14 may use the guidance provided above as an analogy or reference point in determining whether and what lines of their commercial property and casualty insurance are included in the Program and in calculating their direct earned premium and insurer deductible. In this regard, as discussed earlier, the insurance coverage of federally approved insurers within the Program covers only those lines for which the insurer has received federal approval.

3. "Direct Earned Premium"

Section 102(4) of the Act defines direct earned premium as a "direct earned premium for property and casualty insurance issued by any insurer for insurance against" insured losses as defined in section 102(5). As discussed below, the term "insurer deductible" is based on direct earned premiums received by insurers during specified time periods. Interim Guidance I and II, provided guidance to concerning the term "direct earned premium" in relation to the terms "insurer deductible", "insured loss" and "property and casualty insurance". The interim final rule reflects this previous guidance but contains further clarifications and supplementary guidance. For insurers that report premiums to the NAIC on Statutory Page 14, "direct earned premium" is the information reported on column 2 for the lines of commercial property and casualty insurance referenced above, with the specified adjustments to remove personal insurance coverage. This interpretation of direct earned premium information is consistent with scope of "insured loss" as defined in the Act and will be used by Treasury to calculate the insurer deductible for these insurers.

Other insurers that are required to participate in the Program but that do not report on Statutory Page 14 may use the discussion above with reference to Statutory Page 14 as an analogy in developing a comparable means by which they may calculate their direct earned premiums. Treasury will use similar premium information (compiled by these entities or their State regulators) to calculate an insurer's deductible. For county or town mutual insurers that do not report to the NAIC, for purposes of calculating direct earned

premium, data that is reported to their State regulator or maintained by the insurer should be adjusted to: (1) Reflect an appropriate breakdown between commercial and personal risks as outlined above; and (2) if necessary, restated to reflect the accrual method of determining direct earned premium versus direct premium. In addition, such entities should also consider other types of payments that compensate an insurer for the risk of loss (for example, assessments, contributions, or other similar concepts) as being equivalent to premium income for purposes of the Program.

Eligible surplus line carrier insurers may determine the scope of insurance coverage and their insurer deductible under the Program for policies that are in-force as of the date of enactment or that are entered into prior to January 1, 2003, with reference to the geographic scope in the definition of "insured loss," and with reference to the covered commercial property and casualty lines of insurance described above. For policies issued by eligible surplus line carriers after January 1, 2003, as stated in Interim Guidance II, the premium for insurance coverage within the geographic scope of "insured loss" must be priced separately by eligible surplus line carrier insurers.

In calculating the appropriate measure of direct earned premium to determine the deductible for Program Year 1, eligible surplus line carriers may use and rely on the same allocation methodologies contained within the NAIC's "Allocation of Surplus Lines and Independently Procured Insurance Premium Tax on Multi-State Risks Model Regulation" for allocating premium between coverage within the geographic scope of "insured loss" and all other coverage to estimate the appropriate percentage of premium income for such policies that applies to such risks.

Similarly, consistent with the scope of insurance coverage under the Program and other limitations that apply to federally approved insurers, such insurers should use methodology similar to that used by eligible surplus line carriers in calculating the appropriate measure of their direct earned premium.

4. "Insurer Deductible"

The Act defines an "Insurer Deductible" in Section 102(7) for the various "Program Years" and other periods covered by the Program. For example, Section 102(7)(B) defines the insurer deductible for Program Year 1 (January 1, 2003 through December 31, 2003) as "the value of an insurer's direct