

Office of the Secretary of the Treasury

§ 50.92

to be received by the third-party after such payment;

(8) The amount received from the United States pursuant to any other Federal program for compensation of insured losses related to an act of terrorism;

(9) The proposed terms of the written settlement agreement, including release language and subrogation terms;

(10) If requested by Treasury, other relevant agreements, including:

(i) Admissions of liability or insurance coverage;

(ii) Determinations of the number of occurrences under a commercial property and casualty insurance policy;

(iii) The allocation of paid amounts or amounts to be paid to certain policies, or to specific policy, coverage and/or aggregate limits; and

(iv) Any other agreement that may affect the payment or amount of the Federal share of compensation to be paid to the insurer;

(11) A statement indicating whether the proposed settlement has been approved by the Federal court or is subject to such approval and whether such approval is expected or likely; and

(12) Such other information that is related to the insured loss as may be requested by Treasury that it deems necessary to evaluate the proposed settlement.

§ 50.84 Subrogation.

An insurer shall not waive its rights of subrogation under its property and casualty insurance policy and preserve the subrogation right of the United States as provided by section 107(c) of the Act by not taking any action that would prejudice the United States' right of subrogation.

§ 50.85 Amendment related to settlement approval.

Section 107(a)(6) of the Act, added December 22, 2005, provides that procedures and requirements established by the Secretary under § 50.82 (as in effect on the date of issuance of that section in final form) shall apply to any cause of action described in section 107(a)(1) of the Act.

[71 FR 27572, May 11, 2006]

Subpart J—Cap on Annual Liability

SOURCE: 74 FR 66067, Dec. 14, 2009, unless otherwise noted.

§ 50.90 Cap on annual liability.

Pursuant to Section 103 of the Act, if the aggregate insured losses exceed \$100,000,000,000 during any Program Year:

(a) The Secretary shall not make any payment for any portion of the amount of such losses that exceeds \$100,000,000,000;

(b) No insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceeds \$100,000,000,000; and

(c) The Secretary shall determine the *pro rata* share of insured losses to be paid by each insurer that incurs insured losses under the Program.

§ 50.91 Notice to Congress.

Pursuant to section 103(e)(3) of the Act, the Secretary shall provide an initial notice to Congress within 15 days of the certification of an act of terrorism, stating whether the Secretary estimates that aggregate insured losses will exceed \$100,000,000,000 for the Program Year in which the event occurs. Such initial estimate shall be based on insured loss amounts as compiled by insurance industry statistical organizations and any other information the Secretary in his or her discretion considers appropriate. The Secretary shall also notify Congress if estimated or actual aggregate insured losses exceed \$100,000,000,000 during any Program Year.

§ 50.92 Determination of *pro rata* share.

(a) *Pro rata loss percentage (PRLP)* is the percentage determined by the Secretary to be applied by an insurer against the amount that would otherwise be paid by the insurer under the terms and conditions of an insurance policy providing property and casualty insurance under the Program if there were no cap on annual liability under section 103(e)(2)(A) of the Act.

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(b) Except as provided in paragraph (e) of this section, if Treasury estimates that aggregate insured losses may exceed the cap on annual liability for a Program Year, then Treasury will determine a PRLP. The PRLP applies to insured loss payments by insurers for insured losses incurred in the subject Program Year, as specified in § 50.93, from the effective date of the PRLP, as established by Treasury, until such time as Treasury provides notice that the PRLP is revised. Treasury will determine the PRLP based on the following considerations:

(1) Estimates of insured losses from insurance industry statistical organizations;

(2) Any data calls issued by Treasury (see § 50.94);

(3) Expected reliability and accuracy of insured loss estimates and likelihood that insured loss estimates could increase;

(4) Estimates of insured losses and expenses not included in available statistical reporting;

(5) Such other factors as the Secretary considers important.

(c) Treasury shall provide notice of the determination of the PRLP through publication in the FEDERAL REGISTER, or in another manner Treasury deems appropriate, based upon the circumstances of the act of terrorism under consideration.

(d) As appropriate, Treasury will determine any revision to a PRLP based on the same considerations listed in paragraph (b) of this section, and will provide notice for its application to insured loss payments.

(e) If Treasury estimates based on an initial act of terrorism or subsequent act of terrorism within a Program Year that aggregate insured losses may exceed the cap on annual liability, but an appropriate PRLP cannot yet be determined, Treasury will provide notification advising insurers of this circumstance and, after consulting with the relevant State authorities, may initiate the action described in either paragraph (e)(1) or (e)(2) of this section.

(1) Call a hiatus in insurer loss payments for insured losses of up to two weeks. In such a circumstance, Treasury will determine a PRLP as quickly as possible. The PRLP, as later deter-

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mined, will be effective retroactively as of the start of the hiatus. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the PRLP.

(2) Determine an interim PRLP. (i) An interim PRLP is an amount determined without the availability of information necessary for consideration of all factors listed in § 50.92(b). It is a conservatively low percentage amount determined in order to facilitate initial partial claim payments by insurers after an act of terrorism and prior to the time that information becomes available to determine a PRLP based on consideration of the factors listed in § 50.92(b).

(ii) In such a circumstance, Treasury will determine a PRLP to replace the interim PRLP as quickly as possible. The PRLP, as later determined, will be effective retroactively as of the effective date of the interim PRLP. Any insured losses submitted in support of an insurer's claim for the Federal share of compensation will be reviewed for the insurer's compliance with *pro rata* payments in accordance with the effective date of the interim PRLP, or as later replaced by the PRLP as appropriate.

§ 50.93 Application of *pro rata* share.

An insurer shall apply the PRLP to determine the *pro rata* share of each insured loss to be paid by the insurer on all insured losses where there is not an agreement on a complete and final settlement as evidenced by a signed settlement agreement or other means reviewable by a third party as of the effective date established by Treasury. Payments based on the application of the PRLP and determination of the *pro rata* share satisfy the insurer's liability for payment under the Program. Application of the PRLP and the determination of the *pro rata* share are the exclusive means for calculating the amount of insured losses for Program purposes. The *pro rata* share is subject to the following:

(a) The *pro rata* share is determined based on the estimated or actual final claim settlement amount that would otherwise be paid.