

suggested that Treasury's treatment of federally approved insurers (see next section) should be broadened to include all types of coverage provided by this category of insurers.

The issue of Treasury's treatment of federally approved insurers is, for the most part, separable from the fundamental question of whether joint underwriting associations are State licensed or admitted insurers. With regard to joint underwriting associations operating in the United States, if such entities are considered to be State licensed or approved insurers, then they must participate in the Program as insurers in this category under the Act. The federally approved issue is not reached in this situation.

Treasury acknowledges that certain joint underwriting associations and other entities may not fit neatly within what is traditionally thought of as the "State licensed or admitted" market. To provide more clarity in the category of "State licensed or admitted," the final rule provides that, with regard to joint underwriting associations and other pooling arrangements, such entities must meet all three of the following criteria to be an insurer under the Program:

- An entity must have gone through a process to be licensed or admitted to engage in the business of providing primary or excess insurance that is administered by the State's insurance regulator. If such a process differs from what a State's insurance regulator generally applies to insurance companies, such a process should be similar in scope and content;
- An entity must generally be subject to State insurance regulation (including financial reporting requirements) applicable to insurance companies within the State; and
- An entity must be managed independently from other insurers that are participating in the Program.

If a joint underwriting association, pooling arrangement or other entity is still uncertain of its status as State licensed or admitted insurers under the Program, such entities are encouraged to provide Treasury with an explanation of their particular circumstances and how the criteria listed above apply or do not apply. After reviewing this information, Treasury will directly contact such entities regarding their status under the Program. These Treasury decisions also will be made available to the public.

Federally Approved Insurers

Treasury received fifteen comments regarding Treasury's treatment of federally approved insurers in the interim final rule. Under the interim

final rule, the scope of insurance coverage ("insured losses") for federally approved insurers is only to the extent of federal approval of the commercial property and casualty insurance coverage approved by the Federal Agency in connection with maritime, energy or aviation activity. Most of these commenters contended that Treasury's interpretation regarding the scope of insurance coverage under the Program for federally approved insurers was too narrow and that such an interpretation was counter to the intent of Congress.

The maritime shipping industry and their mutually owned insurance companies (International Group of Protection and Indemnity Clubs) raised particular concerns that Treasury's interpretation regarding federally approved insurers would unduly limit access to the Program for the United States and world shipping fleets. As it relates to the maritime industry, the United States Maritime Administration (MARAD) has in place various mechanisms to approve underwriters providing insurance coverage for vessels built or operated with subsidy or covered by vessel obligation guarantees issued pursuant to Title XI of the Merchant Marine Act, 1936, as amended. (46 U.S.C. 1271–1279). Commenters noted that vessels built with Title XI subsidies or guarantees make up a small portion of the United States flag fleet. Therefore, to the extent that the portion of United States flag fleet not subject to MARAD insurance approval was relying solely on federally approved insurers for their insurance coverage, such vessels would currently have limited access to federal payments under the Program. Commenters also noted that a similar situation exists to the extent that foreign flag vessels are currently relying on federally approved insurers for their insurance coverage.

MARAD has set forth eligibility criteria for underwriters of marine hull insurance at 46 CFR 249.4 and 249.5. Broadly speaking, to be eligible under the MARAD program an insurer must be: licensed to do business in the United States; an underwriter at Lloyd's; a member company of the Institute of London Underwriters; or specifically approved by MARAD. There is a fair degree of overlap between MARAD's eligibility criteria for Marine Hull insurers and the definition of "insurer" under the Act. Under sections 102(6)(A)(i–iv), the Act includes entities that are State licensed or admitted and entities that are listed on the Quarterly Listing of Alien Insurers of the NAIC as "insurers" under the Act. These insurers participate in the Program for all coverages that fall within the

definition of "commercial property and casualty" within the scope of the definition of "insured loss" under the Act. Thus, insurers that fall within the first three of MARAD's eligibility criteria are for the most part already eligible insurers under the Act (although there may be some uncertainty regarding the Institute of London Underwriters as it is our understanding that this group has merged with another organization to form the International Underwriting Association). For insurers that MARAD specifically approves as Marine Hull underwriters, based on the most recently available lists (NAIC's Quarterly Listing of Alien Insurers—April 1, 2003, and MARAD Approval List—May 16, 2003), 13 out of the 18 MARAD approved insurers were listed on the NAIC's Quarterly Listing of Alien Insurers, and 1 of the 5 insurers that were not currently on the NAIC's Quarterly Listing of Alien Insurers was on the list in recent years. Thus, as it relates to Marine Hull underwriters, Treasury's interpretation with regard to federally approved insurers does not appear to have caused major disruptions in insurance coverage. Treasury also notes that we did not receive any comments directly from Marine Hull underwriters objecting to the treatment of federally approved insurers.

MARAD, as part of its general insurance information and requirements, also accepts the International Group of Protection and Indemnity Clubs (International Group) as providers of liability coverage. The International Group is made up of 13 independent Protection and Indemnity Clubs. Each club is independently owned by its ship-owner members. The International Group allows for the individual clubs to share claims, purchase reinsurance as a group, and coordinate on maritime public policy issues. Unlike the case with MARAD-approved hull insurance underwriters, of the 13 members of the International Group only two qualify as eligible insurers under the Act in a category separate from the federally approved insurer category. Hence, the bulk of the comments Treasury received from the maritime community focused on the treatment of the International Group under the interim final rule.

Treasury also received similar comments from the offshore oil and gas drilling industry objecting to the interim final rule's interpretation regarding the participation of federally approved insurers under the Act. The Department of Interior's Minerals Management Service approves insurance coverage as one method covered offshore facilities can use for demonstrating oil spill