

financial responsibility, and the Minerals Management Service has procedures in place (30 CFR 253.29) regarding eligibility criteria under their program. To further understand the oil and gas drilling industry's concerns, the Minerals Management Service provided Treasury with a list of insurers that had been approved to provide coverage under the oil spill financial responsibility program. Treasury, in consultation with the NAIC, identified 102 out of 105 insurers that were approved by the Minerals Management Service as being eligible participants under the Act because they either were State licensed or admitted or were on the NAIC's Quarterly Listing of Alien Insurers. Thus, as it relates to insurance coverage for offshore drilling interests, Treasury's interpretation with regard to federally approved insurers does not appear to have caused disruptions in insurance coverage. Treasury did not receive any comments from insurers providing coverage for offshore drilling interests objecting to the treatment of federally approved insurers.

Treasury also received comments regarding the treatment of federally approved insurers under the Department of Labor's authority to authorize workers' compensation coverage under the Longshore and Harbor Worker's Act (33 U.S.C. 901) and its extensions. The Department of Labor authorizes both insurance carriers (20 CFR 703.101) and self-insurers (20 CFR 703.301) for the purpose of meeting the requirements of the Longshore and Harbor Worker's Act. Insurers that are authorized under 20 CFR 703.101 clearly meet the criteria of section 50.5(f)(1)(C) of being "approved or accepted for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity." In this regard a key element is that such insurers are "offering" insurance coverage.

In contrast, the Department of Labor and other Federal agencies may approve self insurance as an acceptable means of meeting the financial requirements or responsibilities of their respective programs. In this regard, self insurance is just another means of establishing financial responsibility and is not a substitute for the requirement that insurance is being "offered." Thus, self insurance arrangements approved by Federal agencies are not included under section 50.5(f)(1)(C). However, Treasury may consider self insurance arrangements for inclusion in the Program through Treasury's general authority to consider such arrangements under section 102(6)(A)(v) of the Act,

which is also described in section 50.5(f)(1)(E) of the interim final rule. Treasury has not yet taken any action regarding the inclusion of self insurance arrangements under the Act.

In addition to the general concerns noted above regarding the treatment of federally approved insurers, airline insurance pools and other commenters (e.g., those addressing issues related to nuclear insurers) noted that Federal approval may be for amounts of insurance coverage that is less than what is normally provided by the insurance industry. For example, commenters noted that standard airline liability limits are \$1.5 billion, while the Federal Aviation Administration's required liability coverage is much lower. Likewise, commenters noted that policy limits on nuclear property coverage generally exceed the mandated requirements of \$1.06 billion per licensee.

After consideration of these comments by the maritime industry and their mutually owned insurance companies and others, Treasury has decided not to make any changes to the interim final rule's treatment of federally approved insurers for the following reasons.

First, the interim final rule's treatment of federally approved insurers is in accord with the statutory language of the Act in section 102(6)(A)(iii) ("approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy or aviation activity"). While some commenters pointed to congressional intent supporting a broader interpretation, no express language in the Act's legislative history supports this view. Moreover, Treasury's treatment of federally approved insurers in the interim final rule is consistent with the underlying reason for the Federal government providing Federal agencies with the authority to approve insurers. In general, the Federal government provides agencies with approval authority to address important national interests or to protect the Federal government's interests. For example, the Federal government requires that airlines maintain a minimum amount of liability insurance coverage. In contrast, the Federal government has no similar overall liability requirements for ocean going vessels, but such vessels are required to demonstrate financial responsibility for oil spills. As an example of protecting the Federal government's interest, MARAD approves insurance coverage for vessels that were built with a government subsidy or guarantee. MARAD could

have been granted broader insurance approval authority than just federally subsidized vessels if there were a clear national interest in ensuring that all ocean going vessels in U.S. waters had adequate overall liability insurance coverage.

Second, Treasury's treatment of federally approved insurers is consistent with Treasury's consideration of a pre-existing nexus (for example, the nexus of State-licensing or NAIC approval for listing on the Quarterly Listing of Alien Insurers) to be very important to the effective and efficient administration of the Program. Some commenters criticized Treasury for not more fully explaining the importance of this consideration.

The following three key factors highlight the importance of a pre-existing regulatory nexus or structure for the administration of the Program.

Ongoing Data Requirements. As Program administrator, Treasury has chosen not to impose new ongoing data reporting requirements on insurers. That does not mean that validating and collecting certain data is not important to the Program. The calculation of an insurer's DEP forms the basis for an insurer calculating its deductible under the Program, and in the event that insurers would submit a claim for payment under the Program, Treasury would expect to validate an insurer's calculation of its deductible. Treasury believes that the existing ongoing data reporting requirements of the State insurance regulators and the consolidated reporting requirements as implemented by the NAIC form a sound basis for the administration of the Program. Therefore, there was not a pressing need to implement new ongoing data reporting requirements through Treasury (and to create additional paperwork burdens for the insurance industry) for this temporary government Program.

However, such ongoing data is useful and important, especially as it relates to foreign insurers that are providing coverage on global risk policies. Global risk policies (e.g., such as those provided to ocean going vessels) have historically not allocated premium income to reflect the scope of insured losses covered under the Act, which is a key measure in calculating an insurer's deductible. Treasury has determined to utilize data collected by the NAIC from insurers on the Quarterly Listing of Alien Insurers that captures the amount of premium income related to the scope of insured loss under the Act. Federal agencies approving insurers under section 102(6)(A)(iii), while generally having some type of financial criteria for