

risk insurance, and at the same time, ensure the integrity of the Program and provide comparable treatment of Program participants. Accordingly, the intent of any additional criteria, if proposed, is not to discourage Program participation by newly formed commercial property and casualty insurance companies in their normal course of business, but to administer the Program effectively and fairly, including preventing evasion of insurer deductible requirements by special purpose entities formed to provide terrorism risk only coverage.

Also in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on appropriate additional criteria, including financial standards, that should be proposed for federally approved insurers under Treasury's authority in section 102(6)(C). One reason for imposing additional criteria on federally approved insurers is because there are no uniform requirements or standards for federal approval under various federal programs. Although some federal programs impose minimum financial standards, others do not. Therefore, Treasury is considering whether additional criteria for federally approved insurers should be proposed to promote the financial integrity of the Program and to otherwise effectively administer the Program. In addition, in the notice of proposed rulemaking published elsewhere in this separate part of the **Federal Register**, Treasury solicits comment on criteria that Treasury should propose and prescribe under section 102(6)(C) to ensure that payments under the Program do not benefit entities with connections to terrorist organizations.

d. "Federally Approved" Insurer.

If an entity does not fall within section 102(6)(A)(i) or (ii), but is approved or accepted by a Federal agency to offer property and casualty insurance in connection with maritime, energy or aviation activities; receives direct earned premiums for any type of commercial property and casualty insurance as required by 102(6)(B), and, if prescribed, meets any criteria established by Treasury under 102(6)(C), then, such an entity is considered by Treasury to be a federally approved "insurer" under section 102(6)(A)(iii).

As reflected in Interim Guidance II, this interim final rule provides that the scope of insurance coverage (insured losses) under the Program for federally approved insurers under section 102(6)(A)(iii) 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. Insured losses under other insurance coverage that may be offered by a federally approved insurer under section 102(6)(A)(iii) is not covered by the Program. This 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*"). This treatment is also in accord 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) as very important to the effective and efficient administration of the Program. This nexus is considered by Treasury to be an important aid in ensuring financial integrity of participants in the Program, in obtaining data, and in connection with recoupment, audit and enforcement responsibilities, among others. In addition, this treatment is consistent with the temporary nature and other statutory structure of the Program. Treasury recognizes that it is possible to interpret section 102(6)(A)(iii) more broadly, but for reasons stated above has determined that the narrower reading is not only in accord with the statutory language but serves other important purposes in the administration of the Program.

Examples of federally approved insurers under section 102(6)(A)(iii) are those insurers that do not fall within section 102(6)(A)(i) or (ii), and are approved or accepted by a Federal agency under the following federal programs and statutes:

- Approval of Underwriters for Marine Hull Insurance (Maritime Administration, U.S. Department of Transportation).
- Aircraft Accident Liability Insurance (U.S. Department of Transportation).
- Oil Spill Financial Responsibility for Offshore Facilities (Minerals Management Service, U.S. Department of the Interior).
- Oil Spill Financial Responsibility for Vessels (United States Coast Guard, U.S. Department of Transportation).
- Longshoremen's and Harbor Workers' Compensation Act (Employment Standards Administration, U.S. Department of Labor).

- Price Anderson Act (Nuclear Regulatory Commission, U.S. Department of Energy).

The above list of Federal insurance programs contains an addition to the list contained in Interim Guidance II through the express inclusion of insurers approved or accepted under the Price Anderson Act. This list is provided as a starting reference point and is not exclusive. Any entity that is approved or accepted by a U.S. agency to offer commercial property and casualty insurance in connection with maritime, energy or aviation activities by a program that is not listed above is particularly encouraged to advise the designated Treasury contacts provided by this rule with the name of the program and the name of the Federal agency that approved or accepted them.

Treasury is not prescribing additional criteria under section 102(6)(C) in the interim final rule for federally approved insurers, but solicits comments elsewhere in this separate part of the **Federal Register** on whether and what additional criteria should be prescribed for federally approved insurer.

3. "Affiliates"

The definition of "insurer" in section 102(6) includes "any affiliate thereof." Section 102(2) of the Act defines "affiliate" to mean "with respect to any insurer, any entity that controls, is controlled by or is under common control *with* the insurer" (emphasis supplied). Any affiliate that does not meet the definition of insurer, for example, it does not fall into any of the categories in section 102(6)(A) or does not receive direct earned premiums for commercial property and casualty insurance as required by section 102(6)(B), is not an "insurer" for purposes of the Program. Consistent with Interim Guidance II, and the definition of "control" discussed below, Treasury will treat the parent company, and all affiliates that meet the requirements of "insurer" in section 102(6)(A), (B) and (C), collectively as one "insurer" for purposes of calculating the direct earned premiums on which the insurer deductible is based under the Program. This consolidated treatment is also in accord with the Conference Report to accompany the Act, which states, in the explanation of section 102 of the Act, that "the terms 'affiliate' and 'control' are meant to ensure that affiliated insurers are treated as a consolidated entity for calculating direct earned premiums." H.R. Conf. Rep. No. 107-779 (2002).

For example, if an insurance company is licensed or admitted to engage in the