**Inapplicability of Public Notice and Comment and Delayed Effect Requirements, the Regulatory Flexibility Act, and Executive Order 12866**

Inasmuch as these amendments merely conform the Customs Regulations to existing law as noted above, pursuant to 5 U.S.C. 553(b)(3)(B), notice and public procedure thereon are unnecessary and pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required. Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act, as amended (5 U.S.C. 601 *et seq.*).

For the same reasons, the amendments do not meet the criteria for a ''significant regulatory action'' as specified in E.O. 12866. Accordingly, a regulatory impact analysis it is not required thereunder.

**Drafting Information**

The principal author of this document was Fernando Peńa, Office of Regulations and Rulings, Bureau of Customs and Border Protection. However, personnel from other Bureau offices participated in its development.

**List of Subjects in 19 CFR Part 4**

Cargo vessels, Coastal zone, Coastwise trade, Customs duties and inspection, Entry, Fees, Fishing vessels, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Seamen, Vessels, and Yachts.

**Amendments to the Regulations**

■ For the reasons stated above, part 4 of the Customs Regulations (19 CFR part 4) is amended as set forth below.

## PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

■ 1. The general authority citation for part 4 and the specific authority citation for § 4.20 continue to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section § 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306,14502, 14511, 14512, 14513, 14701, 14702; 46 U.S.C. App. 121, 128;

* * * * *

■ 2. Amend § 4.20 as follows:
■ a. In paragraph (a):
■ i. all references to the number ''9'' are removed and, in their place, the number ''2'' is added;
■ ii. all references to the number ''27'' are removed and, in their place, the number ''6'' is added;
■ iii. the reference to the number ''45'' is removed and, in its place, the number ''10'' is added; and,
■ iv. the figure ''$1.35'' is removed and, in its place, the number ''30'' is added.
■ b. In paragraph (b):
■ i. the reference to the number ''9'' is removed and, in its place, the number ''2'' is added;
■ ii. the reference to the number ''27'' is removed and, in its place, the number ''6'' is added; and,
■ iii. the figure ''$1.80'' is removed and, in its place, the figure ''40 cents'' is added.
■ c. In the table under paragraph (c), in the column headed ''Regular tax'':
■ i. the figure ''0.09'' and all the figures reading ''.09'' are removed and, in their place, the figure ''.02'' is added; and,
■ ii. the figure ''0.27'' and all the figures reading ''.27'' are removed and, in their place, the figure ''.06'' is added.

Dated: August 7, 2003.

**Robert C. Bonner,**

*Commissioner, Customs and Border Protection.*

[FR Doc. 03–20568 Filed 8–12–03; 8:45 am]

**BILLING CODE 4820–02–P**

## DEPARTMENT OF THE TREASURY

### 31 CFR Part 50

**RIN 1505–AA96**

### Terrorism Risk Insurance Program

**AGENCY:** Departmental Offices, Treasury.

**ACTION:** Final rule.

**SUMMARY:** This final rule modifies the current regulatory definition of ''direct earned premium'' in the regulations under Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Risk Insurance Program (Program) under which the Federal Government will share the risk of insured losses from certified acts of terrorism with commercial property and casualty insurers until the Program sunsets on December 31, 2005. The Department of the Treasury (Treasury) is responsible for implementing the Act. This final rule clarifies the current regulatory definition of ''direct earned premium'' to parallel the definition of ''direct earned premium'' in section 102(4) of the Act.

**DATES:** This final rule is effective August 13, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mario Ugoletti, Deputy Director, Office of Financial Institutions Policy (202) 622–2730, Martha Ellett or Cynthia Reese, Attorney-Advisors, Office of the Assistant General Counsel (Banking & Finance), (202) 622–0480, or C. Christopher Ledoux, Senior Attorney, Terrorism Risk Insurance Program (202) 622–6770 (not toll-free numbers).

**SUPPLEMENTARY INFORMATION:** On July 11, 2003, Treasury published a final rule containing definitions and other general provisions under the Act (68 FR 41250, July 11, 2003) (the July final rule). Treasury is now making a clarifying revision to the definition of ''direct earned premium'' in the July final rule to ensure that the rule parallels the definition in section 102(4) of the Act.

Under section 102(6) of the Act, an ''insurer'' calculates its ''insurer deductible'' based on the insurer's ''direct earned premium.'' Except in the case of new insurers, an ''insurer deductible'' is an insurer's direct earned premiums over the preceding calendar year, multiplied by a percentage specified in the Act for that year. If a certified act of terrorism occurs, an insurer would only be entitled to federal payment under the Program if the insurer's insured losses exceed its insurer deductible and other required conditions are met.

Section 102(4) of the Act defines the term ''direct earned premium'' as ''a direct earned premium for property and casualty insurance issued by any insurer for insurance against losses occurring *at the locations described*'' in section 102(5)(A) and (B) of the Act (emphasis added). These cross-referenced locations appear within the definition of ''insured loss.'' The locations are (1) ''within the United States,'' (2) ''to an air carrier'' (as defined), (3) ''to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States),'' and (4) ''at the premises of any United States mission.'' Therefore, there is a relationship between the locations contained in the definition of ''insured loss'' and the scope of the definition of ''direct earned premium,'' since both make reference to the same specified locations.

The July final rule was preceded by an interim final rule that requested public comments (68 FR 9804, February 28, 2003). No comments were received on the interim final rule concerning the relationship of the terms ''insured loss'' and ''direct earned premium.'' Upon further review, Treasury notes that the current regulatory definition of ''direct earned premium'' in the July final rule could be interpreted as inconsistent with the statutory definition of ''direct earned premium.'' This is because the

regulatory definition ''direct earned premium'' includes an abbreviated reference to ''insured losses'' under the Program. Treasury's intent was to reflect the statutory definition, including the specified locations, as described above. An unintended consequence of the current text of the regulatory definition of direct earned premium is that it might be read to narrow the statutory definition of ''direct earned premium'' to refer only to direct earned premiums for losses resulting from acts of terrorism rather than direct earned premiums on all commercial property and casualty insurance covering all risks within the specified locations.

After further review of the definition in the July final rule, Treasury is by this final rule revising the regulatory definition of ''direct earned premium'' in section 50.5(d) to ensure that it parallels the definition in the Act. Treasury is also revising the related provisions in the definition of direct earned premium for State licensed or admitted insurers that report to the NAIC and certain eligible surplus line carrier insurers. (Although there are no changes to some of these provisions, paragraphs (d)(1) and (d)(3) of section 50.5(d) are being set out in their entirety for ease of reading and understanding.) The effect of these changes to the current regulatory text is to clarify that direct earned premium, as provided in the Act, consists of direct earned premium for all commercial property and casualty insurance (as that term is used in the Act and Treasury's regulations) issued by an insurer for insurance against losses at the specified locations. Consistent with the preamble discussion in the July final rule, premiums for retroactive insurance may continue to be excluded by an insurer if they are associated with losses that occurred prior to the date of enactment of the Act (November 26, 2002). An insurer receiving premiums for retroactive insurance associated with losses that occurred prior to November 26, 2002 may continue to follow the guidelines in section 50.5(d)(1) for the purposes of calculating the appropriate measure of direct earned premium.

**Procedural Requirements**

The Act established a Program to provide for loss sharing payments by the Federal Government for insured losses resulting from certified acts of terrorism. The Act became effective immediately upon the date of enactment (November 26, 2002). Treasury has issued and will be issuing additional regulations to implement the Program. This final regulation merely clarifies the current regulatory definition of ''direct earned premium'' to parallel the definition in the Act. Since no one can predict if, or when, an act of terrorism may occur, there is a clear need for Treasury to modify the previously issued final rule to clarify the definition and avoid any possible reading that it is narrower than the definition in the Act. Moreover, the definition in the Act is unambiguous and the regulatory change merely clarifies the current regulatory definition to parallel the definition in the Act.

For these reasons, Treasury has determined that notice and public procedure are unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B). For the same reasons, pursuant to 5 U.S.C. 553(d)(3), Treasury has determined that there is good cause for this final rule to become effective immediately upon publication.

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply. However, the Act and the Program are intended to provide benefits to the U.S. economy and all businesses, including small businesses, by providing a federal reinsurance backstop to commercial property and casualty insurance policyholders and spreading the risk of insured loss resulting from an act of terrorism.

**List of Subjects in 31 CFR Part 50**

Terrorism risk insurance.

**Authority and Issuance**

■ For the reasons set forth above, 31 CFR part 50 is amended as follows:

## PART 50—TERRORISM RISK INSURANCE PROGRAM

■ 1. The authority citation for part 50 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 321; Title I, Pub. L. 107–297, 116 Stat. 2322 (15 U.S.C. 6701 note).

■ 2. Section 50.5(d) introductory text is revised, and (d)(1) and (d)(3) are revised to read as follows:

**§ 50.5 Definitions.**

* * * * *

(d) *Direct earned premium* means a direct earned premium for all commercial property and casualty insurance issued by any insurer for insurance against all losses, including losses from an act of terrorism, occurring at the locations described in section 102(5)(A) and (B) of the Act.

(1) *State licensed or admitted insurers.* For a State licensed or admitted insurer that reports to the NAIC, direct earned premium is the premium information for commercial property and casualty insurance coverage reported by the insurer on column 2 of the NAIC Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14). (See definition of property and casualty insurance.)

(i) Premium information as reported to the NAIC should be included in the calculation of direct earned premiums for purposes of the Program only to the extent of commercial property and casualty coverage issued by the insurer against losses occurring at the locations described in section 102(5)(A) and (B) of the Act.

(ii) Premiums for personal property and casualty insurance coverage (coverage primarily designed to cover personal, family or household risk exposures, with the exception of coverage written to insure 1 to 4 family rental dwellings owned for the business purpose of generating income for the property owner), or premiums for any other insurance coverage that does not meet the definition of commercial property and casualty insurance, should be excluded in the calculation of direct earned premiums for purposes of the Program.

(iii) Personal property and casualty insurance coverage that includes incidental coverage for commercial purposes is primarily personal coverage, and therefore premiums may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial coverage is incidental if less than 25 percent of the total direct earned premium is attributable to commercial coverage. Commercial property and casualty insurance coverage insuring against losses occurring at locations other than the locations described in section 102(5)(A) and (B) of the Act, or other insurance coverage that does not meet the definition of commercial property and casualty insurance, but that includes incidental coverage for commercial property and casualty insurance insuring against losses occurring at such locations, is primarily non-Program coverage, and therefore premiums also may be fully excluded by an insurer from the calculation of direct earned premium. For purposes of the Program, commercial property and casualty insurance coverage insuring against losses at the locations described in section 102(5)(A) and (B) of the Act is incidental if less than 25 percent of the

total direct earned premium is attributable to such coverage. For purposes of the Program, commercial coverage combined with coverages that otherwise do not meet the definition of commercial property and casualty insurance is incidental if less than 25 percent of the total direct earned premium is for such coverage.

(iv) If a property and casualty insurance policy covers both commercial and personal risk exposures, insurers may allocate the premiums in accordance with the proportion of risk between commercial and personal components in order to ascertain direct earned premium. If a policy includes insurance coverage that meets the definition of commercial property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, but also includes other coverage, insurers may allocate the premiums in accordance with the proportion of risk attributable to the components, in order to ascertain direct earned premium.

* * * * *

(3) *Certain eligible surplus line carrier insurers.* An eligible surplus line carrier insurer listed on the NAIC Quarterly Listing of Alien Insurers must ascertain its direct earned premium as follows:

(i) For policies that were in-force as of November 26, 2002, or entered into prior to January 1, 2003, direct earned premiums are to be determined with reference to the definition of property and casualty insurance and the locations described in section 102(5)(A) and (B) of the Act by allocating the appropriate portion of premium income for losses for property and casualty insurance at such locations. 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 for property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act and all other coverage, to ascertain the appropriate percentage of premium income to be included in direct earned premium, may be used.

(ii) For policies issued after January 1, 2003, premium for insurance that meets the definition of property and casualty insurance for losses occurring at the locations described in section 102(5)(A) and (B) of the Act, must be priced separately by such eligible surplus line carriers.

* * * * *

Dated: August 5, 2003.

**Wayne A. Abernathy,**

*Assistant Secretary of the Treasury.*

[FR Doc. 03–20644 Filed 8–12–03; 8:45 am]

**BILLING CODE 4810–25–P**

## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 165

**[CGD13–03–025]**

**RIN 1625–AA00**

## Safety Zone Regulations, New Tacoma Narrows Bridge Construction Project

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing temporary safety zones during the tow and moor operations of the caissons being used for the Tacoma Narrows Bridge construction project. The Coast Guard is taking this action to safeguard the public from hazards associated with the transport and construction of the caissons being used to construct piers for the new bridge. These safety hazards include, but are not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. Entry into these zones is prohibited unless authorized by the Captain of the Port, Puget Sound or his designated representatives.

**DATES:** This rule is effective from August 6, 2003 through February 6, 2004.

**ADDRESSES:** Documents as indicated in this preamble are available for inspection or copying at the U.S. Coast Guard Marine Safety Office Puget Sound, 1519 Alaskan Way South, Building 1, Seattle, Washington 98134. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** ENS Tyana Thayer c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, at (206) 217–6222.

**SUPPLEMENTARY INFORMATION:**

### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and for making this rule effective less than 30 days after publication in the **Federal Register.** Publishing a NPRM would be contrary to public interest since immediate action is necessary to ensure the safety of vessels and persons that transit in the vicinity of the Tacoma Narrows Bridge. The Coast Guard did not initially intend to issue a safety zone for this project. However, recent events of boaters navigating too close to the construction zone and reports of scuba divers diving near the caissons make a safety zone necessary. If normal notice and comment procedures were followed, this rule would not become effective in sufficient time. For this reason, following normal rulemaking procedures in this case would be impracticable and contrary to the public interest.

### Background and Purpose

The Coast Guard is adopting a temporary safety zone regulation on the Tacoma Narrows and adjoining waters, for the Tacoma Narrows Bridge Project. The Coast Guard has determined it is necessary to limit access to a 250-yard radius around each of the two new bridge piers. Caissons are being used to build the new bridge piers. The new bridge piers are located just north of the existing Tacoma Narrows Bridge. The dangers to persons and vessels transiting this area include, but are not limited to, hazards to navigation, allisions with the caissons, allisions with the caisson mooring system, and collisions with work vessels and barges. The Coast Guard, through this action, intends to promote the safety of persons and vessels in the area. Entry into these zones will be prohibited unless authorized by the Captain of the Port. Coast Guard personnel will enforce these safety zones. The Captain of the Port may be assisted by other Federal, State, or local agencies.

### Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This expectation is based on the fact that the regulated area established by the regulation would encompass a small