

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 Peña, 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;

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- 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.

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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