

contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Outer continental shelf, Penalties, Pipelines, Public lands— mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Dated: February 2, 2005.

**Rebecca W. Watson,**

*Assistant Secretary—Land and Minerals Management.*

■ For the reasons stated in the preamble, the Minerals Management Service amends 30 CFR Part 250 as follows:

**PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF**

■ 1. The authority citation for part 250 continues to read as follows:

**Authority:** 43 U.S.C. 1331 *et seq.*

■ 2. In § 250.198, in the table in paragraph (e), a new entry for document API 510 is added in alphanumeric order to read as follows:

**§ 250.198 Documents incorporated by reference.**

\* \* \* \* \*

(e) \* \* \*

Title of document	Incorporated by reference at
* * * * *	* * * * *
API 510, Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, except for Sections 6.5 and 8.5, Eighth Edition, June 1997, API Stock No. C51008.	§ 250.803(b)(1). § 250.1629(b)(1).

■ 3. In § 250.803, paragraph (b)(1) introductory text is revised to read as follows:

**§ 250.803 Additional production system requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) *Pressure and fired vessels.*

Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of Sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the applicable

provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198

\* \* \* \* \*

■ 4. In § 250.1629, paragraph (b)(1) introductory text is revised to read as follows:

**§ 250.1629 Additional production and fuel gas system requirements.**

\* \* \* \* \*

(b) \* \* \*

(1) Pressure and fired vessels must be designed, fabricated, and code stamped in accordance with the applicable provisions of sections I, IV, and VIII of the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code. Pressure and fired vessels must have maintenance inspection, rating, repair, and alteration performed in accordance with the provisions of the American Petroleum Institute's Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration, API 510 (except Sections 6.5 and 8.5), which is incorporated by reference in § 250.198.

\* \* \* \* \*

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**BILLING CODE 4310-MR-P**

**DEPARTMENT OF THE TREASURY**

**31 CFR Part 50**

**RIN 1505-ZA01**

**Terrorism Risk Insurance Program; Technical Amendments to "Make Available" Provision and "Insurer Deductible" Definition**

**AGENCY:** Departmental Offices, Treasury.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (Treasury) is issuing this final rule as part of its implementation of Title I of the Terrorism Risk Insurance Act of 2002 (Act). The Act established a temporary Terrorism Insurance Program (Program) under which the Federal Government will share the risk of insured loss from certified acts of terrorism with commercial property and casualty insurers until the Program ends on December 31, 2005. This final rule makes minor technical changes to Subpart A of Part 50 of Title 31. One change conforms existing regulations to the June 18, 2004 determination by the Secretary of the Treasury to extend the "make available" provisions of section 103(c) of the Act through the third year

of the Program (calendar year 2005). A second change clarifies the definition of the insurer deductible for Program Year 3 for certain newly formed insurers to more closely parallel the language of the Act.

**DATES:** This final rule is effective February 14, 2005.

**FOR FURTHER INFORMATION CONTACT:** David Brummond, Legal Counsel, or Howard Leikin, Senior Insurance Advisor, Terrorism Risk Insurance Program, (202) 622-6770 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On November 26, 2002, the President signed into law the Terrorism Risk Insurance Act of 2002 (Pub. L. 107-297, 116 Stat. 2322). The Act was effective immediately. The Act's purposes are to address market disruptions, ensure the continued widespread availability and affordability of commercial property and casualty insurance for terrorism risk, and to allow for a transition period for the private markets to stabilize and build capacity while preserving state insurance regulation and consumer protections.

Title I of the Act establishes a temporary Federal program of shared public and private compensation for insured commercial property and casualty losses resulting from an act of terrorism, which as defined in the Act is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General. The Act authorizes Treasury to administer and implement the Terrorism Risk Insurance Program, and to issue regulations and procedures. The Program provides a Federal reinsurance backstop for three years. The Program ends on December 31, 2005. Thereafter, the Act provides Treasury with certain continuing authority to take actions as necessary to ensure payment, recoupment, adjustments of compensation, and reimbursement for insured losses arising out of any act of terrorism (as defined under the Act) occurring during the period between November 26, 2002, and December 31, 2005.

Each entity that meets the definition of "insurer" (well over 2000 firms) must participate in the Program. The amount of the Federal share of an insured loss resulting from an act of terrorism is to be determined based upon insurance company deductibles and excess loss sharing with the Federal Government, as specified by the Act and the implementing regulations. An insurer's deductible increases each year of the

Program, thereby reducing the Federal Government's share prior to expiration of the Program. An insurer's deductible is calculated based on a percentage of the value of direct earned premiums collected over certain statutory periods. Once an insurer has met its deductible, the Federal payments cover 90 percent of insured losses above the deductible, subject to an annual industry-aggregate limit of \$100 billion.

## II. The "Make Available" Provision

The mandatory availability or "make available" provisions in section 103(c) of the Act require that, for Program Year 1, Program Year 2, and, if so determined by the Secretary, for Program Year 3, all entities that meet the definition of insurer under the Program must make available in all of their commercial property and casualty insurance policies coverage for insured losses resulting from an act of terrorism. This coverage cannot differ materially from the terms, amounts and other coverage limitations applicable to losses arising from events other than acts of terrorism.

### A. Secretary Determination

The Act requires the Secretary of the Treasury to determine, not later than September 1, 2004, whether to extend the make available requirements through Program Year 3, based on factors referenced in section 108(d)(1) of the Act. The factors referred to in section 108(d)(1) of the Act are:

- The "effectiveness of the Program;"
- The "likely capacity of the property and casualty insurance industry to offer insurance for terrorism risk after termination of the Program;" and
- The "availability and affordability of such insurance for various policyholders, including railroads, trucking, and public transit."

On May 5, 2004, Treasury published a request for comments in the **Federal Register** and solicited comments and information concerning the statutory factors in section 108(d)(1) of the Act to assist the Secretary with the "make available" determination. See 69 FR 25168 (May 5, 2004). The comment period closed on June 4, 2004, and nearly 200 comments were received.

On June 18, 2004, the Secretary announced his decision to extend the "make available" requirements through Program Year 3. (See <http://www.treas.gov/press/releases/js1734.htm>; <http://www.treas.gov/press/releases/js1735.htm>). This final rule conforms the Act's implementing regulations to reflect the Secretary's determination.

### B. The Final Rule

This final rule amends section 50.20(b), which was previously reserved, and section 50.21 to reflect the Secretary's determination to extend the "make available" provisions of section 103(c) of the Act through Program Year 3 (calendar year 2005). The amendment to section 50.20(b) also specifically clarifies that insurers are not required to provide coverage for insured losses resulting from acts of terrorism beyond the date the Program expires and the Federal backstop no longer exists.

### III. Insurer Deductible—Newly Formed Insurers

The Act defines "Insurer Deductible" in Section 102(7) for the various "Program Years" of the Program. Section 102(7)(E) provides that notwithstanding the general rules for each Program Year, if an insurer has not had a full year of operations during the calendar year immediately preceding the applicable Program Year, the "insurer deductible" is "such portion of the direct earned premiums of the insurer as the Secretary determines appropriate, subject to appropriate methodologies established by the Secretary for measuring such direct earned premiums."

The current regulation at Section 50.5(g)(2) provides that for an insurer that came into existence after November 26, 2002, the insurer deductible will be based on data for direct earned premiums for the current Program Year, and that if the insurer has not had a full year of operations during the applicable Program Year, the direct earned premiums for the current Program Year will be annualized.

Treasury proposed this rule recognizing that new companies would have limited business operations, that their premium income likely would be somewhat volatile, and that this volatility could persist throughout the life of the Program. 68 FR 9811 (Feb. 28, 2003). Two commenters generally supported Treasury's determination that premiums for new insurers would be annualized in the calculation of their insurer deductible. 68 FR 41263 (July 11, 2004). In revisiting this matter at this point in the Program, however, Treasury has concluded that while the concern about new company premium income volatility remains valid, the Act provides specific guidance in the case where an insurer was not in existence on November 26, 2002 but nevertheless has had a full year of operations in the year preceding Program Year 3, the last year of the Program. The final rule addresses such a circumstance by

adding a new section 50.5(g)(3) for Program Year 3 with language that more closely parallels the statutory language of the Act.

### 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 makes two technical changes. First, it amends section 50.20(b) (previously reserved) to reflect the Secretary's decision to extend the "make available" provisions of section 103(c) of the Act through Program Year 3 (calendar year 2005). Second, the regulation clarifies the definition of "insurer deductible" to more closely parallel the language in the Act. The first change reflects a determination already made and announced. The second change merely clarifies the regulation and conforms it to the language of the Act.

For these reasons, Treasury has determined that notice and public comment are unnecessary and contrary to the public interest, pursuant to 5 U.S.C. 553(b)(B) and, pursuant to 5 U.S.C. 553(d)(3), 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.

### 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. Subpart A of part 50 is amended by adding § 50.5(g)(3) to read as follows:

**§ 50.5 Definitions.**

\* \* \* \* \*

(g) *Insurer deductible* means:

\* \* \* \* \*

(3) Notwithstanding paragraph (g)(2) of this section, the insurer deductible for Program Year 3 (January 1, 2005 through December 31, 2005) for an insurer that has not had a full year of operations during calendar year 2004 will be based on annualized data for the insurer's direct earned premiums for Program Year 3, multiplied by 15 percent. For an insurer that came into existence after November 26, 2002 and has had a full year of operations during calendar year 2004, the insurer deductible for Program Year 3 is the value of an insurer's direct earned premiums over calendar year 2004, multiplied by 15 percent.

■ 3. Subpart A of part 50 is amended by revising § 50.20(b) to read as follows:

**§ 50.20 General mandatory availability requirements.**

\* \* \* \* \*

(b) *Program Year 3—calendar year 2005.* In accordance with the determination of the Secretary announced June 18, 2004, an insurer must comply with paragraphs (a)(1) and (a)(2) of this section during Program Year 3. Notwithstanding paragraph (a)(2) of this section and § 50.23(a), property and casualty insurance coverage for insured losses does not have to be made available beyond December 31, 2005 (the last day of Program Year 3) even if the policy period of insurance coverage for losses from events other than acts of terrorism extends beyond that date.

■ 4. Subpart A of part 50 is amended by revising § 50.21(a) to read as follows:

**§ 50.21 Make available.**

(a) *General.* The requirement to make available coverage as provided in § 50.20 applies to policies in existence on November 26, 2002, new policies issued and renewals of existing policies during the period beginning on November 26, 2002 and ending on December 31, 2004 (the last day of Program Year 2), and to new policies issued and renewals of existing policies in Program Year 3 (calendar year 2005). The requirement applies at the time an insurer makes the initial offer of coverage as well as at the time an insurer makes an initial offer of renewal of an existing policy.

\* \* \* \* \*

Dated: February 1, 2005.

**Gregory Zerzan,***Acting Assistant Secretary of the Treasury.*

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**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117**

[CGD08-04-036]

RIN 1625-AA09

**Drawbridge Operation Regulation; St. Croix River, MN****AGENCY:** Coast Guard, DHS.**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is changing the regulation governing the Stillwater Highway Drawbridge, across the St. Croix River at Mile 23.4, at Stillwater, Minnesota. Under this rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from midnight, October 14, 2005, until midnight, March 15, 2006. This rule allows time to perform maintenance and repairs to the bridge.

**DATES:** This rule is effective from midnight, October 14, 2005 until midnight, March 15, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket [CGD08-04-036] and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Commander (obr), Eighth Coast Guard District, maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

On November 5, 2004, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulation; St. Croix River, Minnesota," in the **Federal Register** (69 FR 64553). We received no comment letters on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

On September 13, 2004, the Minnesota Department of Transportation, requested a temporary change to the operation of the Stillwater Highway Drawbridge across the St. Croix River, Mile 23.4, at Stillwater, Minnesota to allow the drawbridge to remain in the closed-to-navigation position for 152 consecutive days for critical repairs and maintenance.

The Stillwater Highway Drawbridge navigation span has a vertical clearance of 10.9 feet above normal pool in the closed to navigation position.

Navigation on the waterway consists primarily of commercial and recreational watercraft and will not be significantly impacted due to the reduced navigation in winter months. Presently, the draw opens from October 16 until May 14 with 24 hours advance notice for passage of river traffic. The Minnesota Department of Transportation requested the drawbridge be permitted to remain closed-to-navigation from midnight, October 14, 2005 until midnight, March 15, 2006. Winter conditions on the St. Croix River will preclude any significant navigation demands for the drawspan opening. Performing maintenance on the bridge during the winter, when the number of vessels likely to be impacted is minimal, is preferred to bridge closure or advance notification requirements during the navigation season. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

**Discussion of Comments and Changes**

The Coast Guard received no comment letters. No changes will be made to this final rule.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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).

The Coast Guard expects that this temporary change to the operation of the Stillwater Highway Drawbridge will have minimal economic impact on commercial traffic operating on the St. Croix River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridge's regular operation.