



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

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Regulatory Bulletin 2002-08*

TO: ALL PROPERTY & CASUALTY INSURERS WRITING COMMERCIAL LINES INSURANCE PRODUCTS, ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN INSURERS, AND ALL OTHER INTERESTED PARTIES

**FROM: CHARLES R. COHEN
DIRECTOR OF INSURANCE**

DATE: DECEMBER 19, 2002

RE: VOLUNTARY EXPEDITED FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE ACT OF 2002

The Terrorism Risk Insurance Act of 2002 ("the Act") took effect on November 26, 2002. In the interest of nationally uniform implementation of this federal law, the National Association of Insurance Commissioners ("NAIC") developed a model implementation bulletin. This bulletin is based upon the NAIC model bulletin with only those modifications necessary and appropriate in light of Arizona law.

Background

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the tragic events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. The Act provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers.

* This Substantive Policy Statement is advisory only. A Substantive Policy Statement does not include internal procedural documents that only affect the internal procedures of the Agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules made in accordance with the Arizona Administrative Procedure Act. If you believe that this Substantive Policy Statement does impose additional requirements or penalties on regulated parties you may petition the agency under Arizona Revised Statutes Section 41-1033 for a review of the Statement.

The intent of this bulletin is to advise you of certain provisions of the Act that may require insurers to submit a filing in Arizona and to inform you regarding a voluntary procedure for insurers to use to expedite the filing and timely review of the disclosure notices, policy language and the applicable rates that are discussed in the Act.

Section 102(6) of the Act defines “insurers” for purposes of the Act. “Insurer” means any entity and affiliate thereof--(A) that is--(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto; (iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity; (iv) a State residual market insurance entity or State workers' compensation fund; (B) that receives direct earned premium for any type of commercial property and casualty insurance coverage. The Secretary of Treasury may extend the Act to other classes or types of captive insurers and other self-insured arrangements by municipalities and other entities as well as to group life insurance.

Section 102(12) of the Act states the term “property and casualty insurance” (A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety insurance, and (B) does not include crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurance corporations, medical malpractice, health or life insurance including group life, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance.

All insurers, as defined in the Act, are required by the Act to participate in the Terrorism Insurance Program (the Program) and make available coverage for *insured losses* in all of their covered commercial lines policies. The term “*insured loss*” means any loss resulting from an act of terrorism (including an act of war, in the case of workers' compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(i) occurs within the United States; or (ii) occurs in an air carrier (as described in section 40102 of title 49, United States Code), 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), regardless of where the loss occurs, or at the premises of a United States mission. §102(5). The Act also advises that insured loss excludes amounts awarded in a civil action that are attributable to punitive damages. §107(a)(5). The Act further requires insurers to make available property and casualty insurance coverage for *insured losses* that do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism. §103(c)(1)(B).

The Act voids any terrorism exclusions in a contract for property and casualty insurance that is in force on the date of enactment of this Act, November 26, 2002, to the extent that it excludes losses that would otherwise be *insured losses*. §105(a)

The Act also voids any state approval of any terrorism exclusion from a contract for property or casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be *insured losses*. §105(b).

The Act allows insurers to “reinstate a preexisting provision in a contract for commercial property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for acts of terrorism only” if one of two conditions are met. The insurer must have received a written statement from the insured that affirmatively authorizes such reinstatement or if the insurer has provided notice to the insured, at least 30 days before any such reinstatement and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage. §105(c).

Definition of Insured Loss

As a result of the “*insured loss*” definition contained in the Act, there are essentially two distinct types of losses that a business might face that result from terrorism. One type of loss is the *insured loss* that is defined within and covered by the provisions of the Act. For convenience, we will adopt the term “certified loss” to refer to losses resulting from certified acts of terrorism. §102(1)(A). The second type of loss that a business might face is one that does not fit within the definition of *insured loss* as described in the Act. For convenience, we will adopt the term “non-certified loss” to refer to losses resulting from terrorism that are not certified. §102(1)(B). The most significant difference between these losses is that the *certified losses* will always involve a foreign person or foreign interest, while the *non-certified losses* may not. §102(1)(A)(iv).

Please note that the preemption of Arizona’s filing law, A.R.S. § 20-398(A), applies only to contract language that is applicable to certified losses. If an insurer intends to reinstate an exclusion on in-force policies as allowed under the Act, it may only reinstate an exclusion that previously existed on the policy.

Arizona law does not restrict insurers’ ability to limit *non-certified losses* in their multi-line or monoline property and casualty policies as long as the policies are not ambiguous, misleading or deceptive, and the policies comply with Arizona Revised Statutes §20-398 and with any other applicable provision of Arizona Revised Statutes, Title 20.

Definition of Act of Terrorism

Section 102(1) defines an *act of terrorism* for purposes of the Act. Section 102(1)(A) states, “The term “act of terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.” Section 102(1)(B) states, “No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers’ compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.” Section 102(1)(C) and (D) specify that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

The Act includes a definition of acts of terrorism that is used within this bulletin to mean *certified losses*. Policies subject to policy form filing requirements should also define what constitutes an act of terrorism for *non-certified losses*. For *non-certified losses*, the Department would accept the following definition, or one that is more liberal to policyholders:

The phrase “non-certified act of terrorism” means a violent act or an act that is dangerous to human life, property; or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Submission of Rates, Policy Form Language and Disclosure Notices

Insurers are required to comply with the Act and with applicable state law. Surplus lines insurers, of course, are exempt from any policy form and rate filings requirements with the Department. Section 106(a)(2)(B) of the Act states that “during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance coverage covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable...” The subsection further notes that rates remain subject to subsequent regulatory review based on whether a rate is “excessive, inadequate, or unfairly discriminatory” and other applicable state law. Similarly, policy forms are subject to subsequent review based on all applicable laws and regulations. Thus, a system is created where insurers can immediately implement prospective rate changes for coverage of *insured losses* related to *acts of terrorism* as defined in the Act. Policy language for terrorism risk and insurance covered by the Act (granting coverage or excluding coverage for *insured losses*) is only exempt from prior approval or waiting periods to the extent that the policy language relates to *insured losses* as defined in the Act. Other policy language changes and related pricing remain subject to current applicable state law and will be processed in an expedited manner.

Other than workers' compensation rate and form filings, most commercial lines products are exempt from rate and form filing requirements.¹ Thus, most insurers, other than workers' compensation insurers, will not submit terrorism risk filings to the Department. Although exempt from filing requirements, these insurers must still comply with the substantive provisions of the Act. The Department, will monitor compliance with the Act. Rating organizations are not exempt from filing requirements and will be required to make filings.

The following procedures apply only to filings that are not exempt, including filings of rating and rate service organizations and workers' compensation insurers.

For rates that are not exempt, the rate filings should provide sufficient information for the Department to determine what price would be charged to a business seeking to cover *certified losses*. The Department will accept filings that contain a specified percentage of premium to

¹ For a complete list of filing exemptions, see Order of the Director in Docket No. 01A-215-INS, filed October 26, 2001. A copy of this Order is available on the Department's web site, www.state.az.us/id.

provide for coverage for *certified losses*. Filers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The filer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the Department to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of filers, the Department will not require supporting documentation for rates for certified losses for filings that apply an increased premium charge of between 0% and 50% and do not vary by application of other rating factors.

For forms that are not exempt, filers must submit the policy language that they intend to use in Arizona within a reasonable time after they are implemented. The Department considers 30 days to be a reasonable time for purposes of completing an expedited filing of policy language. The policy should define *acts of terrorism* and both *certified* and *non-certified losses* in ways that are consistent with the Act, state law and the guidance provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy.

The Department requests that the disclosure notices be filed for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders in Arizona and should be clear and not misleading to Arizona business owners. The disclosures should comply with the requirements of the Act and should be consistent with the policy language and rates filed by the filer. Details about the applicable requirements are contained in the following two paragraphs.

In-force business receives special consideration under the Act. Section 105 (a) voids any terrorism exclusion on existing policies to the extent that it excludes losses that would otherwise be *insured losses* as defined in the Act. It details a process for insurers and policyholders to reinstate the voided exclusions. Under that process, an insurer may reinstate a preexisting provision in a contract that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or if the insured fails to pay any increased premium charged by the insurer for providing such coverage and the insurer provided notice, at least 30 days before any such reinstatement as provided in Section 105 of the Act. §105(c).

There are also disclosures required for new business and renewal business. Although avoidance of contract language is not an issue, insurers must make certain disclosures to policyholders to remain in compliance with the Act. Section 103(b)(2) requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for covered *insured losses* and advise that a federal program exists where the federal government will share significant portions of major *insured losses* with insurers.

Effect on Workers' Compensation Insurance Coverage

Treatment of workers' compensation is slightly different than for other property and casualty insurance coverages. First, Section 102(1)(B)(i) provides that the federal program will share the risk of loss for workers' compensation for acts of war in addition to acts of terrorism. This treatment occurs because of the statutory nature of the workers' compensation program, which does not provide an exclusion for losses resulting from an act of war. Under Arizona law there

is no exclusion for workers' compensation losses resulting from an act of war. There is no provision in the Act that would preempt the compulsory coverage aspects of workers' compensation insurance policies. In other respects, however, workers' compensation coverage is treated under the Act as any other covered line of insurance. Therefore, the notice requirements of Section 103(b)(2) and the mandatory "make available" requirements of Section 103(c) apply to workers' compensation policies. In this connection, workers' compensation insurers are required to separately state (the amount of) the estimated portion of the premium being charged a policyholder for acts of terrorism, as defined in the Act. As Arizona's workers' compensation law does not have any exclusions for terrorism or war, neither insurers nor policyholders may use the Act's procedures to create such an exclusion. With regard to the filing and approval of rates and forms, workers' compensation insurers are also covered by the Act, specifically Section 106(a)(2)(B) that waives any state prior approval or time requirements for the first year of the Act. Workers' compensation rates and forms are not exempt and must be filed in accordance with the procedures outlined in this bulletin.

Standard Fire Policy

The requirements for fire coverage are established by Arizona law and, where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage. In Arizona, inland marine is not included within the standard fire policy. A.R.S. § 20-1501.

Information for SERFF Filers

For insurers that use the System for Electronic Rate and Form Filings ("SERFF"), there will be an expedited filing form in that system for your use.

Explanation and Instructions for Terrorism Rate and Form Review

The Act preempts any state prior approval law pertaining to rates or forms—including any law that imposes waiting periods—prior to use of a rate or form for purposes of terrorism coverage, as defined by the Act. This preemption remains in effect for the first year of the Act. Consistent with these requirements of the Act, this bulletin establishes a system for rates and forms, requiring insurers or rating organizations that are required to file their rates and forms to file them no later than 30 days after their first date of use. The procedure for obtaining an expedited review of such rates and forms is set forth below. However, nothing in this bulletin shall be construed as establishing a rate or form filing review or approval requirement where one does not otherwise exist under Arizona law. Policy language changes and related pricing for *non-certified losses* remain subject to current applicable state law and will be processed in an expedited manner.

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by this state and other states. An insurer or advisory organization wishing to receive expedited treatment of its filing shall complete the EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING as directed. In addition, the

insurer(s) or advisory organization submitting the filing must certify that the filing is consistent with this bulletin, state law and the provisions of the Act. Certification is made by signing the appropriate blank on the transmittal form. Filings for policy language changes and related pricing for *non-certified losses*, which remain subject to current applicable state law, may be made using the attached filing transmittal form. These filings will be processed in an expedited manner. The attached expedited filing transmittal document replaces all otherwise applicable filing forms and filing transmittal forms for these filings.

To be complete, an expedited filing must include the following:

1. A completed, certified Expedited Filing Transmittal Document for each insurer or advisory organization.
2. One copy of each policy form or endorsement that the insurer intends to use, unless the insurer has given an advisory organization authorization to file them on its behalf.
3. A copy of the rates and rating systems along with the supporting documentation.
4. A copy of any disclosure notices that will be used to convey information to policyholders in Arizona.
5. A postage-paid, self-addressed envelope **large enough to accommodate the return**. Note that a comparable filing transmittal form is available in SERFF.

If this filing is for multiple companies, please provide a copy of the transmittal header for each company and an extra copy for return to the company. (i.e. 7 companies = 8 copies)

Effective Date

This bulletin shall take immediate effect. The expedited filing process outlined herein shall expire on December 31, 2003. The remainder of the bulletin shall expire on December 31, 2005, unless Congress extends the duration of the Act.

**EXPEDITED FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

This page applies to the following state(s) _____

Indicate Type of Filing
Filing Related to <i>Certified Losses</i>
Filing Related to <i>Non-Certified Losses</i>
Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail

Filing information

Line of Insurance (see attachment)	
Company Program Title (Marketing title) (if applicable)	
Filing Type ** see note below	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state, if applicable	

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	Form # or Rate Page Include edition date	Replacement Or withdrawn?	If replacement, give form # or rate page(s) it replaces	Previous State Filing Number, if required by state
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of this state; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature

Print Name:

Title:

**EXPEDITED FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

This page applies to the following state(s) _____

Indicate Type of Filing
Filing Related to <i>Certified Losses</i>
Filing Related to <i>Non-Certified Losses</i>
Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

Filing information

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	01-01-02 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2001-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state, if applicable	Not approved yet. Filed on same date as this filing.

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	<u>Form # or Rate Page</u> <u>Include edition date</u>	<u>Replacement</u> <u>Or withdrawn?</u>	<u>If replacement,</u> <u>give form # or rate</u> <u>page(s) it replaces</u>	<u>Previous State</u> <u>Filing Number,</u> <u>if required</u> <u>by state</u>
01	Certified Loss Exclusion	CG XX XX 12 02	[X] Replacement [] Withdrawn [] Neither	List form number of previous terrorism exclusion	
02			[] Replacement [] Withdrawn [] Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- Is compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of this state;
- Is compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature

Print Name:

Title: