



STATE OF ARIZONA
DEPARTMENT OF INSURANCE

JANET NAPOLITANO
Governor

2910 NORTH 44th STREET, SUITE 210
PHOENIX, ARIZONA 85018-7256
(602) 912-8456 (phone) (602) 912-8452 (fax)

CHRISTINA URIAS
Director of Insurance

REGULATORY BULLETIN 2004-3¹

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: Christina Urias
Director

Date: September 7, 2004

RE: **Uncertainty Related to Expiration of the Terrorism Risk Insurance Act of 2002 Exclusions Related to Acts of Terrorism**

Background

The Arizona Department of Insurance ("ADOI") is issuing this Bulletin at the suggestion of the National Association of Insurance Commissioners (NAIC) to inform insurers of regulators' concerns regarding this matter.

Congress adopted the Terrorism Risk Insurance Act of 2002 (TRIA) to provide a temporary federal shared loss program for incurred losses resulting from certain acts of terrorism. TRIA protects American businesses by minimizing market disruptions and ensuring the widespread availability and affordability of property and casualty insurance for terrorism risk. Recently there has been uncertainty in the commercial lines property and casualty markets because of the pending expiration of TRIA on December 31, 2005. Although this date appears to be in the distant future, insurers will be called upon to make decisions about commercial insurance coverage later this year.

As early as this September, insurers and their policyholders will be required to make decisions that will affect coverage well into 2006. Annual policy renewals with effective dates of Jan. 1, 2005 or later, will have to contemplate "no federal backstop" for any losses in 2006.

¹This 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.

Consequently, regulators expect insurers and advisory organizations to file widespread conditional exclusions for terrorism coverage with renewal policies.

As a result, insurers, businesses and regulators will be in the same situation encountered in the aftermath of Sept. 11th, which, in large part, prompted TRIA's enactment in the first place. Once again, insurance regulators must consider approval of certain coverage limitations for acts of terrorism, or risk possible serious solvency concerns in the insurance industry.

The intent of this bulletin is to inform you of the ADOI's decision to consider certain conditional coverage limitations for acts of terrorism. In a recent conference call, the NAIC agreed the conditional endorsement approach, while not providing a perfect solution, offers the best alternative to at least provide some certainty should Congress fail to extend TRIA past December 31, 2005. Please be advised that I intend to act in accordance with NAIC recommendations to the extent appropriate under Arizona law. I believe this to be the best course of action as it balances the insurers' need for certainty with the business consumer's legitimate concerns about uninsured events.

Instead of approving very broad total coverage exclusions for acts of terrorism, Arizona will consider approving conditional coverage limitations substantially similar to those described herein.

Explanation and Instructions for Expedited Review

Arizona's approval of coverage limitations will have some significant limitations, however they will continue to provide coverage for acts of terrorism under certain circumstances. The following limitations apply to policies providing property insurance coverage:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses exceeding \$25,000,000 for related incidents that occur within a 72 hour period;
- Exclusions for acts of terrorism are not subject to the above limitations if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act involves the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and the evidence available suggests that such release was one purpose of the terrorism act.

The following limitations apply to policies providing liability insurance coverage:

- Exclusion for acts of terrorism only apply if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72 hour period; or,

- Death or serious physical injury involving 50 or more persons. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or,
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to the above limitations if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act involves the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and the evidence available suggests that such release was one purpose of the terrorism act.

Arizona will accept the following definition of acts of terrorism, or other such definitions that are more liberal to policyholders:

Terrorism means activities against persons, organizations or property of any nature:

1. That involve the following or preparation for the following:
 - a. Use or threat of force or violence; or,
 - b. Commission or threat of a dangerous act; or,
 - c. Commission or threat of an act that interferes with or disrupts an electronic, communication, information, or mechanical system; and
2. When one or both of the following applies:
 - a. The effect is to intimidate or coerce a government or the civilian population or any segment thereof, or to disrupt any segment of the economy; or,
 - b. It appears that the intent is to intimidate or coerce a government, or to further political, ideological, religious, social or economic objectives or to express (or to express opposition to) a philosophy or ideology.

Arizona will allow insurers and rating organizations to submit and receive approval for conditional endorsements. These conditional endorsements would only apply if Congress fails to enact an extension to TRIA, or enacts changes to TRIA that substantially change the risk of loss assumed by an insurer or policyholder.

For an insurer or rating organization to receive expedited approval of its exclusions for commercial lines insurance coverages, the exclusionary endorsements must comply with the terms, conditions and instructions set forth in this bulletin. Further, insurers must certify endorsement filings provide coverage at least as broad as those described herein.

Please be aware that, although the insurer will make the determination regarding the coverage thresholds and the basis for claim settlements described herein, all such decisions are subject to ADOI scrutiny and insurers must be prepared to substantiate any coverage/claim denials.

Forms with Instructions

The attached is a uniform filing transmittal form. An insurer or rating organization wishing to receive expedited form filing treatment must complete the EXPEDITED FILING—TERRORIST EXCLUSIONS APPLICATION Form Filing Transmittal as directed. Please note the filer submitting this filing must certify (by signing the transmittal form where indicated) that it is providing coverage at least as broad as that described herein.

As per Regulatory Bulletin 2002-08, other than workers' compensation rate and form filings, most commercial lines products are exempt from rate and form filing requirements.² Therefore, ADOI anticipates most insurers, other than workers' compensation insurers, will not submit terrorism risk filings to the Department, yet, although these insurers are exempt from filing requirements, they must still comply with the substantive provisions of the Act.

A form filing **must** include the following:

1. A completed, certified Form Filing Transmittal Header for each insurer.
2. One copy of each endorsement.

A postage-paid, self-addressed envelope **large enough to accommodate the return**. Note that a comparable filing transmittal form is available in SERFF.

Effective Date

Unless Congress acts to extend or modify TRIA, this bulletin shall take immediate effect and shall expire on Dec. 31, 2005.

² For a complete list of filing exemptions, see Order of the Director in Docket No. 03A-144-INS, filed October 24, 2003. A copy of this Order is available on the Department's web site at www.id.state.az.us.

EXPEDITED FILING— COMMERCIAL LINES TERRORIST EXCLUSIONS APPLICATION

Ed. 6/1/04

This page applies to the following state(s) _____

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	

	Component/Form Name /Description/Synopsis	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # 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		

A complete form filing must include the following:

- A completed Form Filing Transmittal Document for each insurer.
- One copy of each endorsement.
- 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:

- Using endorsements that provide coverage that is at least as broad as described in the bulletin.

Signature

Print Name:

Title:

COMPLETED SAMPLE FORM
EXPEDITED FILING—COMMERCIAL LINES TERRORIST EXCLUSIONS APPLICATION

Ed. 6/1/04

This page applies to the following state(s) _____

Department Use only

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

Contact Information 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	08-01-04 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2004-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state	Not approved yet. Filed on same date as this filing.

	Component/Form Name /Description/Synopsis	Form #) Include edition date	Replacement Or withdrawn?	If replacement, give form # it replaces	Previous State Filing Number, if required by state
01	Conditional Terrorism Coverage Limitation Endorsement	CG 21 69 01 02	[] Replacement [] Withdrawn [x] Neither		
02			[] Replacement [] Withdrawn [] Neither		

A complete form filing must include the following:

- A completed Form Filing Transmittal Header for each insurer.
- One copy of each endorsement.
- 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:

- Using endorsements that provide coverage that is at least as broad as described in the bulletin.

Signature

Print Name:

Title:

w:\Sep04\Cmte\CWg\Terrorism\Model Bulletin.Final.doc