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State of Arizona

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Director of Insurance

REGULATORY BULLETIN 2008-01¹
(Reissued February 7, 2008)²

To: All Property & Casualty Insurers, All Rating Organizations, All Advisory Organizations, and All Other Interested Parties

From: Christina Urias
Director

Date: January 15, 2008

Re: **VOLUNTARY EXPEDITED PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007**

BACKGROUND

The Arizona Department of Insurance ("ADOI") hereby withdraws its Regulatory Bulletin 2006-03 and issues this Bulletin in conjunction with the National Association of Insurance Commissioner ("NAIC") to inform interested parties of recent developments regarding this matter.

Due to the uncertainty in the commercial lines property and casualty insurance and reinsurance markets as a result of the substantial industry losses on September 11, 2001, Congress enacted and the President signed the Terrorism Risk Insurance Act of 2002 ("TRIA" or "Act"), to provide a temporary federal backstop to calm market fears over future terrorist attacks and assist the insurance industry in allocating capital to provide coverage for these unpredictable and potentially catastrophic results. The Act provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. Congress revised and extended the Act for an additional two years (through December 31, 2007) with the enactment of the Terrorism Risk Insurance Extension Act of 2005 ("Extension Act"). Congress then revised and extended the Act and the Extension Act for an additional seven years (through December 31, 2014) with the enactment of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007 ("Reauthorization Act").

The Reauthorization Act changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting on behalf of any foreign person or foreign interest.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000,000 cap.
- Fixing the Insurer Deductible at 20% on an insurer's direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.

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.

² The ADOI reissued this Bulletin to correct a scrivener's error in the original date of Regulatory Bulletin 2008-01 and in the dollar amounts shown in the second and fifth bullets listed under the Reauthorization Act changes.

- Fixing the program trigger for federal participation in aggregate insured losses at \$100,000,000 for all additional program years.
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program where they exceed \$100,000,000,000.
- Requiring the Comptroller General to study the availability and affordability of coverage for terrorism losses involving nuclear, biological, chemical, or radiological materials and issue a report by January 1, 2009.
- Requiring the Comptroller General to study if there are specific markets in the United States where unique capacity constraints exist on the amount of terrorism coverage available and issue a report by July 1, 2008.
- Requiring the President's Working Group on Financial Markets to continue to study long-term availability and affordability of coverage for terrorism losses.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholder surcharges.

Other terms of the Act, as amended by the Extension Act, remain unchanged.

The intent of this Regulatory Bulletin is to advise you of certain provisions of the Reauthorization Act that may require insurers to submit a filing of the disclosure notices, policy language and the applicable rates.

DEFINITION OF ACT OF TERRORISM

One of the changes Congress made to TRIA with the enactment of the Reauthorization Act was a revision to the definition of an act of terrorism that eliminated the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that the federal government may certify acts formerly referred to as "domestic" terrorism as an act of terrorism under TRIA.

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to "the Secretary" refers to the Secretary of the Treasury. The revised section 102(1)(A) states, "the term 'act of terrorism' means any act that is certified by the Secretary, 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, 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(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 Reauthorization Act, as amended, contains in Section 103(1)(B), a program trigger of \$100,000,000 in aggregate industry insured losses resulting from a certified act of terrorism before the Reauthorization Act triggers federal reimbursement.

Arizona will not allow exclusions of coverage for acts of terrorism that fail to be *certified losses* solely because they fall below the \$5,000,000 threshold in Section 102(1)(B) on any policy that provides coverage for acts of terrorism that fail to be *certified*. Insurers required to file policy forms may submit language containing coverage limitation for *certified losses* that exceed \$100,000,000,000 in the aggregate.

SUBMISSION OF RATES, POLICY FORM LANGUAGE AND DISCLOSURE NOTICES

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, Arizona does not require a rate filing unless the insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price the insurer will charge a business to cover *certified losses*. Arizona will accept filings that contain a specified percentage of premium to provide coverage for *certified losses*. Insurers 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 insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply and include supporting documentation sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For insurers' convenience, Arizona will waive its requirements for supporting documentation for rates for *certified losses* for filings that apply an increased premium charge of between 0% and 10% and do not vary by application of other rating factors.

The Director's Order, Docket No. 05A-108-INS, filed October 21, 2005 and amended October 5, 2007 possibly exempted some forms in certain lines or sublines of insurance from the ARS §20-398(A) form filing requirements and/or may require no changes, however, under Exhibit A, Section II(C) of the Order, the Director hereby expressly directs insurers to file all forms that require an amendment to the policy's existing terrorism clause.

The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, state law and the guidance provided in this Regulatory Bulletin. Insurers should completely and accurately describe the definitions, terms and conditions and policy coverage. Insurers may conclude that current filings are in compliance with the Act, as amended, state law and the requirements of this Regulatory Bulletin. Arizona will likely require a filing, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest.

Another change introduced in the Reauthorization Act is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in the Act and the Extension Act, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2), at the time of offer, purchase and renewal of the policy.

The Director requests insurers and rating organizations file disclosure notices for informational purposes, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of Arizona policyholders and should be clear and not misleading to business owners in Arizona. The insurer's disclosures should comply with the requirements of the Reauthorization Act, as amended, and should be consistent with the insurer's policy language and filed rates.

Filers may use the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing filings instead of the Property and Casualty Transmittal Document and Checklists to expedite the filing process. We also encourage filers to take advantage of the SERFF system for submitting filings to expedite the process.

OPTIONAL PROVISION FOR STANDARD FIRE POLICY STATES

In Arizona, HB2192 (Ch.218, Laws 2005) amended the Standard Fire Policy to permit insurers to exclude acts of terrorism from the policy. Specifically, ARS §20-1503(B) provides:

The Arizona standard fire policy may exclude coverage for loss by fire or other perils insured against if the loss is caused directly or indirectly by terrorism and involves risks other than a type of risk to which Article 12 [Homeowners] of this chapter applies.

EFFECTIVE DATE

This Regulatory Bulletin shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act and/or Reauthorization Act.

Please direct any questions related to this Regulatory Bulletin to Dean Ehler, Assistant Director, Property & Casualty Division via e-mail (Dehler#azinsurance.gov) or telephone (602-364-3453).

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

This page applies to the following state(s) _____

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> 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	

	Component/Form Name /Description/Synopsis	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.
- 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 in compliance with the terms of the Terrorism Risk Insurance Act, as amended, 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: