



Office of the Director

Arizona Department of Insurance

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Douglas A. Ducey, Governor

Germaine L. Marks, Director

REGULATORY BULLETIN 2015-02 ¹

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

From: Germaine L. Marks
Director

Date: February 24, 2015

Re: **FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2015.**

The purpose of this Bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 ("TRIA" or "the Act") by reauthorization, which may require insurers to submit a filing in Arizona of disclosure notices, policy language and applicable rates as a result of the Act. For further details related to the Act, please consult the Act itself. This Bulletin supersedes Regulatory Bulletin 2008-01 titled "Voluntary Expedited Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007."

Background

Due to the uncertainty in the commercial lines property and casualty insurance 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 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. Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer 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 federal backstop to facilitate the ability of the insurance industry to continue to provide coverage for the unpredictable and potentially catastrophic events. In

¹ 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.

November 2002, Congress enacted and the President signed into law the Terrorism Risk Insurance Act of 2002. This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007, and for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015.

The Act, as amended and extended, included several changes including:

- Extending the program through December 31, 2020.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%.
- Requiring the Secretary of the Treasury to certify acts of terrorism in consultation with the Secretary of Homeland Security.
- Amending the program trigger to apply to certified acts with insured losses exceeding \$100 million for calendar year 2015, \$120 million for calendar year 2016, \$140 million for calendar year 2017, \$160 million for calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020 and any calendar year thereafter.
- The mandatory recoupment of the federal share through policyholder surcharges increasing to 140 percent (from 133 percent).
- The insurance marketplace aggregate retention amount being the lesser of \$27.5 billion, increasing annually by \$2 billion until it equals \$37.5 billion, and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals \$37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior three calendar years as such sum is determined by the Secretary of the Treasury by regulation.
- Requiring the Secretary of the Treasury, not later than nine months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit to the Secretary of the Treasury for a Congressional report to be submitted on June 20, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the Program. The information to be provided includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchase, and such other matters as the Secretary considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities.
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund.
- Requiring the Secretary of the Treasury to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace.
- Requiring the Secretary of the Treasury to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with

respect to the creation and development of nongovernmental risk-sharing mechanisms. The Advisory Committee will be composed of nine members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.

- Changing the terms “program year” and “transition period” to “calendar year” throughout.

Definition of Act of Terrorism

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 consultation with the Secretary of Homeland security, 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(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 (E) 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.

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, no rate filing is required unless an 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 would be charged to a business seeking to cover *certified losses*. Arizona will accept filings that contain a specified percentage of premium to provide for 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. The supporting documentation should be sufficient for the reviewer to determine whether the rates are excessive, inadequate or unfairly discriminatory. [For the convenience of insurers, this state 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. 13A-071-INS, filed October 4, 2013, 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. The definitions, terms, and

conditions should completely and accurately describe the coverage that will be provided in the policy. Insurers may include current filings that are in compliance with the Act, as amended, state law and 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 domestic person or domestic interest.

Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition other disclosure requirements previously contained in TRIA, insurers since 2007 have had to provide clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer, purchase, and renewal of the policy.

The Director requests that 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 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, 2020, unless Congress extends the duration of the Act.

Please direct any questions related to this Regulatory Bulletin to Lynn Gile at (602) 364-3457 or lgile@azinsurance.gov.

EXPEDITED FILING TRANSMITTAL DOCUMENT FOR TERRORISM RISK INSURANCE FORMS AND PRICING

This page applies to the following state(s) _____

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| Department Use only |
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| Company Name(s) | Domicile | NAIC # | FEIN # |
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Contact Info for Filer

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

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| 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: _____