

**STATE OF CONNECTICUT
INSURANCE DEPARTMENT**

**Bulletin PC-64
February 14, 2008**

TO: All Property & Casualty Insurers Writing Commercial Lines Insurance Products and All Insurers on the NAIC Quarterly Listing of Alien Insurers

RE: Filing Procedures For Compliance With The Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007

Introduction

There has been some 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. However, after those tragic events, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 (the “Act”). This federal law provides a “backstop” for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007 and has now been extended for an additional seven years through **December 31, 2014** with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 (the “2007 Act”).

This Bulletin is intended to address several new provisions contained in the 2007 Act which 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 a clear and conspicuous notice to policyholders of the existence of the \$100 billion cap.
- Fixing the Insurer Deductible at 20% of an insurer’s direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.
- Fixing the program trigger at \$100 million for all additional program years.
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed \$100 billion.
- Requiring the President’s Working Group on Financial Markets to continue an ongoing study of the long-term availability and affordability of terrorism risk insurance.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholders surcharges.

This Bulletin is intended to provide guidance to insurers of certain provisions of the 2007 Act that may require the submission of filings to the Connecticut Insurance Department (the “Department”) of the policy language and revised rates. This Bulletin supersedes prior Department Bulletin PC-50, Bulletin PC-52, Bulletin PC-55, Bulletin PC-56 and Bulletin PC-60.

Definition of Act of Terrorism

One of the changes made by the 2007 Act is a revision to the definition of an *act of terrorism*¹ that eliminates 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 acts formerly referred to as domestic terrorism may now be certified as an *act of terrorism* under the 2007 Act. Pursuant to Connecticut General Statutes Section 38a-307a., the Insurance Commissioner hereby adopts this new definition of an *act of terrorism* as a Connecticut requirement.

Mandatory Availability of Terrorism Coverage

As under the Act, all insurers, as defined in Section 102 (6) of the 2007 Act, are required to participate in the federal Terrorism Insurance Program and make available coverage for insured losses in all of their covered commercial lines policies. The 2007 Act mandates that such coverage shall not differ materially from the terms, amounts or other coverage limitations applicable to losses arising from events other than *acts of terrorism*.

Program Trigger and the \$5,000,000 Threshold

The 2007 Act contains a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

Please note that the Department will not allow insurers to exclude or limit coverage for losses that are otherwise within the scope of the policy and fail to be certified *acts of terrorism* solely because they result from events with aggregate losses that fall below the \$5,000,000 threshold in Section 102(1)(B). Insurers required to file policy forms may submit language containing coverage limitations for certified *acts of terrorism* that exceed \$100 billion in the aggregate.

Exclusions or Limitations for Lines of Business Not Defined as “Property and Casualty Insurance” under the 2007 Act

The Department will permit some limitations in coverage for *acts of terrorism* for certain commercial lines of business not defined as *property and casualty insurance*² under the 2007 Act subject to the following:

¹ Section 102(1) of the 2007 Act defines an *act of terrorism* as 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, 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, “[n]o 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 determination of an *act of terrorism* is final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

² Section 102 of the 2007 Act provides that the term “**property and casualty insurance**” (A) means commercial lines of

For policies providing **property insurance** coverage the following limitations apply:

- 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;
- Exclusions for *acts of terrorism* are not subject to the limitations above 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 is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing **liability insurance** coverage the following limitations apply:

- 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
- Fifty or more persons sustain death or *serious physical injury* for related incidents that occur within a 72-hour period. 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 limitations above 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 is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability insurance; and **(B)** Does **not** include--

- (i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured;
- (ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U. S.C. 4901)) or title insurance;
- (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations;
- (iv) insurance for medical malpractice;
- (v) health or life insurance, including group life insurance;
- (vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.);
- (vii) reinsurance or retrocessional reinsurance;
- (viii) commercial automobile insurance;
- (ix) burglary and theft insurance;
- (x) surety insurance;
- (xi) professional liability insurance; or
- (xii) farm owners multiple peril insurance.

Terrorism Exclusions Not Permitted by the Department

The Department will **not** permit terrorism exclusions for:

- Workers' Compensation Insurance or Excess Workers' Compensation Insurance
- Commercial Automobile Financial Responsibility Limits, notwithstanding the above limitation related to commercial automobile insurance
- Personal Risk Insurance

Standard Fire Policy Matters Under Connecticut Law

Conn. Gen. Stat. section 38a-307a. provides that "until the expiration of the Terrorism Insurance Program established in the federal Terrorism Risk Insurance Act of 2002 (P.L. 107-297) ("TRIA") as amended from time to time, for a commercial risk insurance policy, the standard form of fire insurance policy set forth in section 38a-307 of the general statutes, as amended by this act, may provide that the company shall not be liable for loss by fire or other perils insured against in the policy caused, directly or indirectly, by terrorism, as defined by the Insurance Commissioner, provided the premiums charged for such policy shall reflect any savings projected from the exclusion of such perils." It should be noted that the Commissioner has adopted the new definition of an *act of terrorism* set forth in the 2007 Act.

The limited exclusion permitted by Conn. Gen. Stat. 38a-307a. applies only when the insured has rejected coverage for terrorism. The limited exclusion will end upon the expiration of the federal Terrorism Insurance Program under the 2007 Act. Companies that incorporate the permitted limited exclusion must also provide a credit or reduction in premium to reflect any savings projected from the exclusion. Such filings must be made on the "Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing" attached to this Bulletin. Under Connecticut law, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. This statutorily mandated coverage cannot be waived.

Submission of Rates and Policy Form Language

Rates

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 terrorism coverage. 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 losses resulting from certified *acts of terrorism*. The Department will accept filings that contain a specified percentage of premium to provide for terrorism coverage for *insured losses* as defined under the 2007 Act. 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 is required to be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory. For the convenience of insurers, the Department will waive its requirements for supporting documentation for rates for certified *acts of terrorism* for filings that apply an increased premium charge of between 0% and 6% and do not vary by application of other rating factors.

Policy Forms

Insurers subject to policy form regulation must submit the policy language that they intend to use to the Department. The policy form must define *acts of terrorism* consistent with the 2007 Act and this Bulletin. The definitions, terms and conditions used in the policy forms are required to be complete and accurately describe the coverage that will be provided under the policy. Insurers must withdraw or replace any currently effective forms that are not in compliance with the 2007 Act, which would include any policy forms that make a distinction between acts of a foreign person or foreign interest and acts of a domestic person or domestic interest.

The Department reminds insurers that the terrorism form filings need to be submitted in compliance with Bulletin PC-62 Filing Review Standards, any deviations from ISO must be accompanied by a side-by-side comparison along with a detailed explanation for any deviations.

Expedited Filings

If an insurer wants to take advantage of the Department's voluntary speed to market initiative for revised terrorism products, it is required to complete the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the 2007 Act and applicable Connecticut laws. Completion of the Expedited Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

We encourage filers to take advantage of the SERFF system for submitting such filings, and will permit any other state requirement (*e.g.*, filing forms, supplemental exhibits, etc.) to be similarly bypassed. This voluntary expedited filing system shall remain in place until April 1, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to April 1, 2008) then it must submit a normal filing, subject to the Department's usual filing requirements, including any prior approval or waiting period.

Since the provisions of the 2007 Act are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of the 2007 Act, the Department will permit insurers and advisory organizations to place 2007 Act compliant rates and policy forms into immediate use prior to filing with the Department.

Disclosure Notice Matters

Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to previous disclosure requirements, insurers must now also 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. Such disclosures are not subject to review by the Department but will need to be made available to the Department upon request. Insurers may use the Model NAIC disclosures referred to at the following link: http://www.naic.org/topics/topic_tria.htm .

Notice To Insured of a Reduction in Coverage (Applicable to Renewal Policies and In-Force Policies)

The 2007 Act eliminates 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. That means that acts of domestic terrorism which were formerly covered under Connecticut policies if the act of terrorism resulted in industry-wide insured losses of \$25,000,000 or less, or death or serious injury to less than fifty persons, will not be covered unless the *act of terrorism* results in insured losses of less than \$5,000,000 in the aggregate, or if the insured purchases coverage for acts of terrorism. This is a significant reduction in coverage for those insureds who did not purchase coverage for losses resulting from *acts of terrorism*. As a result, insurers must provide the policyholder with either a notice of nonrenewal or a conditional renewal notice with a prominent disclosure of any new terrorism exclusion because policies that incorporate the permitted limited exclusion will have a significant reduction in coverage.

The conditional renewal notice must comply with the same 60-day advance notice requirements of Conn. Gen. Stat. 38a-323 as is required for nonrenewal of a policy. The conditional renewal notice must be sent by registered or certified mail or by mail evidenced by a United States Post Office certificate of mailing. Please see the Department's Bulletin PC-42-04 for detailed Guidelines Regarding the Use of Conditional Renewal Notices. For renewal policies, the notice should be provided at the same time as the disclosure notice and offer of coverage required by the 2007 Act. For in-force policies, the notice must be mailed no later than March 31, 2008.

Effective Date

This Bulletin shall take effect immediately and shall expire on December 31, 2014, unless Congress extends the duration of the 2007 Act. The expedited filing procedures discussed in this Bulletin shall expire on April 1, 2008.



Thomas R. Sullivan
Insurance Commissioner

**STATE OF CONNECTICUT INSURANCE DEPARTMENT
EXPEDITED FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

This page applies to the following state(s) _____

Indicate Type of Filing		Department Use Only	
Company Name(s)	Domicile	NAIC #	FEIN #
Name and address of Filer(s)	Telephone#	Fax #	e-mail
Line of Insurance (see checklists on Department's Website)			
Company Program Title (Marketing title, if applicable)			
Filing Type ** see important 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	Form # or Rate Page— Include Edition Date	Replacement or Withdrawn	If replacement, give form # or rate page(s) it replaces	Other Comments
01					
02					

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- A copy of each endorsement or policy form being filed for approval in compliance with the Terrorism Risk Insurance Program Reauthorization Act of 2007 (the "2007 Act").
- A copy of the rules, rates, lost cost multiplier, or rating plan being filed in compliance with the 2007 Act.
- The appropriate filing fees, if required.
- A postage-paid, self-addressed envelope **large enough to accommodate the acknowledgment or approval of the filing.**

The insurer(s) submitting this filing certifies that it is in compliance with:

- The terms of the 2007 Act and the laws of the State of Connecticut
- The requirements of the Bulletin containing the voluntary expedited filing procedures:

Signature

Print Name

Title:

****IMPORTANT NOTE:**

Please do not submit disclosure forms required by the 2007 Act since the Department does not review such notices.