# STATE OF CONNECTICUT

*INSURANCE DEPARTMENT*

**Bulletin PC- 60**
**February 01, 2006**

**TO:** **ALL PROPERTY & CASUALTY INSURERS WRITING COMMERCIAL LINES INSURANCE PRODUCTS**

**RE:** **VOLUNTARY EXPEDITED FILING PROCEDURES FOR COMPLIANCE WITH THE PROVISIONS OF THE TERRORISM RISK INSURANCE EXTENSION ACT OF 2005**

**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. As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 ("Act"). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act has now been extended for an additional two years through December 31, 2007 with the enactment of the Terrorism Risk Insurance Extension Act of 2005 ("TRIA").

Several provisions of the Act have changed in the extension. Those changes include: deletion of commercial auto, burglary and theft, surety, professional liability, and farm owners multiperil coverages from eligible lines; increase in the individual company deductible for 2006 to 17.5 percent and the 2007 deductible to 20 percent; increase in the industry aggregate retention level from $15 billion to $25 billion in 2006 and to $27.5 billion in 2007; reduction in the federal share of compensation for covered losses from 90 percent to 85 percent for 2007; maintains the $5 million threshold for certification of a terrorist act, while establishing a per event trigger for federal participation in aggregate insured losses of $50 million for losses occurring after March 31, 2006 and before January 1, 2007 and $100 million for losses occurring in the 2007 Program Year; extension of existing litigation management provisions and codification of regulations requiring submission and approval of proposed settlements; and directing the President's Working Group on Financial Markets to study long-term availability and affordability of coverage for terrorism losses, including group life and nuclear, biological, chemical and radiological events. The President's Working Group on Financial Markets, in consultation with representatives of the National Association of Insurance Commissioners, the insurance and securities industries and policyholders, is directed to submit a report of its findings to the House Financial Services and Senate Banking Committees by September 30, 2006.

The intent of this bulletin is to advise you of certain provisions of the Act, as extended, that may require insurers to submit a filing to the Connecticut Insurance Department ("Department") of the disclosure notices, policy language and the applicable rates that are discussed in the Act. In many cases, insurers' current filings will be adequate and do not need to be revised.

**Definition of "insurer"**

Subsection 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.

**Definition of "property and casualty insurance"**

Subsection 102(12) of the Act states that the term "property and casualty insurance" (A) means commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and directors and officers liability 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, reinsurance or retrocessional reinsurance, commercial automobile insurance, burglary and theft insurance, surety insurance, professional liability insurance, or farm owners multiple peril insurance.

**Mandatory Insurer Participation and Coverage Availability**

All insurers, as defined in the Act in Section 102(6), are required by the Act to participate in the Terrorism Insurance Program ("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—(A) occurs within the United States; or (B) 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. The Act also advises that insured loss excludes amounts awarded in a civil action that are attributable to punitive damages. 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.

**Certified and Non-Certified Losses**

As a result of the definition of insured loss 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 moniker of "certified loss" to refer to losses resulting from certified acts of terrorism. 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 moniker of "non-certified loss" to refer to losses resulting from terrorism that is not certified. 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.

Connecticut has allowed, and will continue to allow, some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations apply to *non-certified losses*:

- 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 to *non-certified losses*:

- 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.

**Terrorism exclusions are not permitted for:**

- Workers' Compensation Insurance or Excess Workers' Compensation Insurance
- Commercial Automobile Financial Responsibility Limits
- Personal Risk Insurance

**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) of the Act 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.

Connecticut 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 *certified losses*. Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed $100 billion.

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 will 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**

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*. 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*. The Department 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 its basis for selection of the rates and rating systems that it chooses to apply. The supporting documentation should 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 losses for filings that apply an increased premium charge of between 0% and 5% and do not vary by application of other rating factors.

Insurers subject to policy form regulation must submit the policy language that they intend to use in Connecticut on or before the first date of use. However, insurers may conclude that current filings are in compliance with the Act, state law and the requirements of this bulletin and, in those cases, new filings are not required. Insurers that have adopted the Insurance Services Office, Inc. ("ISO") and American Association of Insurance Services ("AAIS") forms pursuant to the Act, and insurers that have filed forms with the Department containing equivalent language, need not refile. If an insurer wishes to revise its forms, the Department recommends they follow the expedited filing procedures outlined in Bulletin PC-56. When filing a new form the policy should define *acts of terrorism* and both *certified* and *non-certified losses* in ways that are consistent with the Act, as amended and extended by TRIA, 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 Insurance Commissioner 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 Connecticut policyholders and should be clear and not misleading to Connecticut 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 insurer. If the insurer plans on using the disclosure forms enclosed with this bulletin, and there are no changes (other than adding company name(s) or form numbers), no filing will be necessary.

**Effect on Commercial Automobile Liability Coverage**

Terrorism exclusions are not permitted for Commercial Automobile Financial Responsibility Limits.

**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) of the Act 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 Connecticut 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) of the Act and the mandatory "make available" requirements of Section 103(c) of the Act 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 Connecticut'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.

**Optional Provision for Standard Fire Policy**

With the enactment of the Terrorism Risk Insurance Extension Act of 2005, and as outlined under Conn. Gen. Stat. §38a-307a, Connecticut law permits the terrorism exclusion for direct or indirect loss caused by fire or other covered perils following an act of terrorism through December 31, 2007 or unless the Act is extended further.

The limited exclusion permitted by Conn. Gen. Stat. §38a-307a applies only when the insured has rejected coverage for acts of terrorism. The limited exclusion will end upon the expiration of the federal Terrorism Insurance Program established under the 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. Any filings made to the Department's Property-Casualty Division that incorporate the permitted limited exclusion must reflect the requirement of Conn. Gen. Stat. § 38a-307a that premiums are to reflect the projected savings. Such filings must be made on the "Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing" attached to Bulletin PC-52.

Because policies that incorporate the permitted limited exclusion will have a significant reduction in coverage, insurers must provide the policyholder with either a notice of nonrenewal or a conditional renewal notice with a prominent disclosure of the new terrorism exclusion. 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 Bulletin PC-42-04 for detailed Guidelines Regarding the Use of Conditional Renewal Notices.

**Effective Date**

This bulletin shall take immediate effect and shall expire on December 31, 2007, unless Congress extends the duration of the Act.

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Insurance Commissioner