



STATE OF CONNECTICUT

INSURANCE DEPARTMENT

Bulletin No. PC-91
May 11, 2020

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 Terrorism Risk Insurance Program Reauthorization Act of 2019

Introduction

This Bulletin is intended to replace Bulletin PC-76 dated February 5, 2015 as a result of the passage of the Terrorism Risk Insurance Program Reauthorization Act of 2019 (the "2019 Reauthorization Act"). The 2019 Reauthorization Act amends and extends the Terrorism Risk Insurance Act of 2002, as amended ("TRIA") until **December 31, 2027**. Some of the changes contained in the 2019 Reauthorization Act include:

- Changing the timing of the mandatory recoupment by moving the date of each referenced year back five years.
- Requiring the Secretary of the Treasury to include in their annual report an evaluation of the availability and affordability of terrorism risk insurance, specifically for places of worship.
- Requiring the Comptroller General of the United States to conduct a study on: overall vulnerabilities and potential costs of cyber-attacks on the United States; whether state-defined cyber liability under a property/casualty line of insurance is adequate coverage for an act of cyber terrorism; whether such risks can be adequately priced by the private market; and whether the current risk-share systems under TRIA are appropriate for a cyber terrorism event.

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

TRIA contains a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered. The program trigger is adjusted on an annual basis. In 2020 and for each calendar year thereafter, the program trigger is \$200 million.

With respect to aggregate losses that fall below the \$5,000,000 threshold under TRIA, please note that the Insurance 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. Insurers required to file policy forms may submit language containing coverage limitations for certified *acts of terrorism* that exceed the \$100 billion industry aggregate.

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

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*¹ subject to the following:

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.

¹ Section 102 of the TRIA provides 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--

- (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.

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.

Terrorism Exclusions Not Permitted by the Insurance 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. § 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 Conn. Gen. Stat. § 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.” The Insurance Department has adopted the current definition of an *act of terrorism*.

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 TRIA. 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 SERFF 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 TRIA, as amended. 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 TRIA 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 TRIA. The Department reminds insurers that any deviations from ISO must be accompanied by a side-by-side comparison along with a detailed explanation for any deviations.

Filers are required to use the SERFF system for submitting revised terrorism insurance products. In support of speed-to-market initiatives, filers should use the term “**TRIA2019**”

in the SERFF product name field to indicate a filing related to terrorism made in connection with the 2019 Reauthorization and use a TOI of 35.0 Interline and the appropriate Sub-TOI when submitting a terrorism filing. The SERFF system alleviates the need to provide additional information in support of a speed-to-market tool.

Disclosure Notice Matters

The Terrorism Risk Insurance Program Reauthorization Act of 2007 (the “2007 Reauthorization”) included a policyholder disclosure requirement. Specifically, in addition to previous disclosure requirements, insurers must now also provide a clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap provided in the 2007 Reauthorization, 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 for informational purposes. Insurers may use the Model NAIC disclosures that can be found on the NAIC website.



Andrew N. Mais
Insurance Commissioner

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

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

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:

- A completed Expedited SERFF Filing Transmittal Document.
- One copy of each endorsement, disclosure form and/or 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, if applicable.
- The appropriate filing fees, if applicable

The insurer(s) submitting this filing certifies that it:

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with a prompt for an Adobe electronic signature.]