

March 14,  
2003

To: **All Illinois Licensed Property and Casualty Insurance Companies**  
From: **Arnold Dutcher, Acting Director**  
Re: **(CB #2003-02) Federal Terrorism Risk Insurance Act of 2002 (TRIA) and Filing Procedures and Requirements for Commercial Lines Rates and Forms**  
**For Forms Filing Questions:** Keith Fanning, P&C Compliance Unit E-mail: [keith\\_fanning@ins.state.il.us](mailto:keith_fanning@ins.state.il.us)

Reply To: **For Questions regarding Policy Renewal, Cancellation, or Nonrenewal:** Dale Emerson, Consumer Services; E-mail: [DOI.InfoDesk@illinois.gov](mailto:DOI.InfoDesk@illinois.gov)

## **Background**

The intent of this bulletin is to advise property and casualty insurers of certain provisions of the Terrorism Risk Insurance Act of 2002 (TRIA) and how TRIA affects property and casualty rate and form filings in Illinois. This bulletin is divided into the following sections:

- [I. Important Provisions in TRIA](#)
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## **I. Important Provisions in TRIA**

### **Definition of Insurers that Must Participate in the Terrorism Insurance Program (The Program)**

Section 102(6) of TRIA defines "insurer" as "any entity, including any affiliate thereof (A) that is (i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) not licensed or admitted as described in clause (i), if it is 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; or (v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f); (B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of

entities described in sections 103(d) and 103(f); and (C) that meets any other criteria that the Secretary may reasonably prescribe.

**NOTE:**

The Secretary of Treasury may extend TRIA to other classes or types of insurers, such as self-insurers, as well as group life insurance.

**Definition of "Property and Casualty Insurance"**

Section 102(12) of TRIA defines "property and casualty insurance" as: (A) commercial lines of property and casualty insurance, including excess insurance, workers' compensation insurance, and surety 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); or (vii) reinsurance or retrocessional reinsurance.

**Definition of "Act of Terrorism"**

Section 102(1)(A) defines "act of terrorism" as 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 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) 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.

**Definition of "Insured Loss"**

Section 102(5) of TRIA defines the term "insured loss" as 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 to an air carrier (as defined 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 any United

States mission. The Act also advises that insured loss excludes amounts awarded in a civil action that are attributable to punitive damages.

### **Mandatory Availability of Terrorism Coverage**

From enactment through December 31, 2004, Section 103(c)(1) of TRIA requires insurers to make available, in all property and casualty insurance policies, coverage for insured losses. 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.

### **Disclosure Notice Requirements**

Section 103(b)(2) states that no payment may be made by the Secretary under the Program with respect to an insured loss that is covered by an insurer, unless the insurer provides clear and conspicuous disclosure to the policyholder of the premium charged for insured losses covered by the Program and the federal share of compensation for insured losses under the Program -- according to the following timetable:

For policies issued before November 26, 2002, insurers must provide the disclosure to all policyholders within 90 days from November 26, 2002 (i.e. by February 24, 2003).

For policies issued between November 26, 2002 and February 24, 2003, companies must give the disclosure at the time of offer, purchase or renewal.

For policies issued after February 24, 2003, companies must show the disclosure on a separate line item in the policy, at the time of offer, purchase, or renewal of the policy.

### **Nullification of Preexisting Terrorism Exclusions**

Section 105(a) and (b) of TRIA provides that any terrorism exclusion in force on the date of enactment is void to the extent that it excludes losses that would otherwise be insured losses.

In addition, any State approval of any terrorism exclusion from a contract for property and casualty insurance that was in force on the date of enactment shall be void to the extent that it excludes losses that would otherwise be insured losses.

### **Reinstatement of Preexisting Terrorism Exclusions**

Section 105(c) of TRIA allows an insurer to reinstate a preexisting exclusion only (1) if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement; or (2) if (A) the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage; and (B) the insurer provided notice, at least 30 days before any such reinstatement, of (i) the increased premium for such

terrorism coverage; and (ii) the rights of the insured with respect to such coverage, including any date upon which the exclusion would be reinstated if no payment is received.

### **Preemption of State Prior Approval Rate and Form Laws**

Section 106(a)(2)(B) states that, until 12-31-03, any rates and forms for terrorism risk insurance covered by TRIA shall not be subject to prior approval or a waiting period under any state law.

## **II. Requirements for Illinois Terrorism Form Filings**

### **NOTE:**

This bulletin lists important laws and regulations for companies to know for terrorism form filings. However, companies must ensure that their form filings comply with all Illinois form filing laws and regulations before filing.

### **Requirements for All Terrorism Form Filings**

#### **Insurers that Must File Terrorism Forms**

TRIA does not change state laws regarding which insurers must file forms with the Director.

The Illinois Insurance Code requires all companies writing lines of insurance found in Class 2 (except accident and health), and Class 3 of Section 4 of the Illinois Insurance Code to file policy forms, endorsements, etc., except for the following: forms issued by surplus lines companies, risk retention groups, syndicates, licensed captives, or farm mutuals, surety contracts or fidelity bonds, forms issued to "industrial insureds" as defined in Section 121-2.08 (except for Workers' Compensation policies), and manuscript forms issued to individual risks.

#### **Definitions of "Act of Terrorism"**

For convenience, the Department will adopt the NAIC model bulletin term "certified losses" to refer to "insured losses" under TRIA, and the term "non-certified losses" to refer to all terrorism losses not subject to TRIA.

Forms should clearly define acts of terrorism for both certified losses and non-certified losses in ways that are consistent with TRIA, state laws, and this bulletin.

For certified losses the Department will accept TRIA's definition of act of terrorism or one that is more liberal to the policyholder. (See page 2 of this bulletin for the TRIA definition)

For non-certified losses, the Department will accept the following definition of act of terrorism or one that is more liberal to the policyholder:

"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 terrorism act pursuant to the Federal Terrorism Risk Insurance Act of 2002."

#### Forms May Not Violate Section 143(2) of the Illinois Insurance Code

Section 143(2) of the Illinois Insurance Code (215 ILCS 5/143(2)) permits the Director of Insurance to disapprove any policy form, rider, certificate, application blank or other material if it: (i) violates any provision of the Illinois Insurance Code; (ii) contains inconsistent, ambiguous, or misleading clauses, or (iii) contains exceptions and conditions that will unreasonably or deceptively affect the risks that are purported to be assumed by the policy. If the Director disapproves a policy or form under Section 143(2), the Director may order the insurer to discontinue its use.

#### Exclusions or Limitations for Workers' Compensation Forms

The Department will not accept any terrorism exclusions or limitations for Workers' Compensation forms. This provision does not apply to exclusions or limitations for certified losses that exceed the \$100 billion TRIA cap (as stated below), or to exclusions or limitations for Excess Workers' Compensation forms.

#### Standard Fire Policy Language Exception

All terrorism exclusions or limitations must include an exception for fire following a terrorism loss. This provision does not apply to exclusions or limitations for certified losses that exceed the \$100 billion TRIA cap (as stated below). To ensure that the form language is clear and unambiguous to the policyholder, the standard fire policy exception language must be included on the terrorism coverage exclusion or limitation form. Insureds may not waive this statutorily mandated coverage.

#### **Additional Requirements for Terrorism Forms for Certified Losses**

##### Forms Temporarily Preempted from Prior Approval

Illinois is prior approval only for group inland marine insurance forms (Part 2302, 50 IL Adm Code). Until 12-31-03, TRIA preempts the prior approval of such forms, but only to the extent that the language relates to certified losses under TRIA.

Until 12-31-03, companies may submit group inland marine forms on a file and use basis, to the extent that the language relates to certified losses under TRIA. Forms must be filed with, i.e. received by, the Department no later than their effective dates of use.

For group inland marine form language that does not relate to certified losses under TRIA, prior approval requirements still apply.

## Forms to be Filed Under File and Use

For all commercial lines insurance forms required to be filed, except group inland marine, Illinois is file and use. TRIA does not preempt these laws. Section 143(2) of the Illinois Insurance Code requires forms to be filed with, i.e. received by, the Department no later than their effective dates of use.

## Forms May Not Exclude Coverage Solely Because the Losses Fall Below the \$5,000,000 Threshold

The Department will not accept forms that exclude coverage for acts of terrorism that fail to be certified losses solely because the losses fall below the \$5,000,000 threshold stated in Section 102(1)(B) of TRIA.

## Forms May Exclude Coverage for Certified Losses that Exceed the \$100 Billion TRIA Cap

Companies may exclude coverage for certified losses that exceed the \$100 billion TRIA cap.

### NOTE:

If the Department of Treasury rules that the \$100 billion TRIA cap does NOT apply to workers compensation and fire losses under standard fire policy exceptions, the Director may require companies to retroactively change their form filings and change procedures for adjusting losses accordingly.

## Informational Filing of TRIA Disclosure Notifications

The Illinois Department of Insurance does not require companies to file policyholder notifications. However, the Director requests that TRIA disclosure notifications be filed with us on an informational basis. The disclosure notifications will not be filed or disapproved by the Department.

Companies that adopt the NAIC model disclosure notifications without change do not need to file those notifications if they advise the Department of the adoption with no change.

## **Additional Requirements for Terrorism Forms for Non-Certified Losses**

### Existing Exclusions are Still Valid to the Extent that They Do Not Conflict with TRIA

Any previously filed and accepted terrorism exclusions are still valid in Illinois with respect to terrorism risks not covered by or preempted by TRIA.

However, insurers shall file, as soon as reasonably practicable, revised terrorism forms to clearly distinguish between coverage for certified losses and non-certified losses, and shall apply the new forms at the earliest possible renewal.

### Limitations Still Required from Company Bulletins 2001-11 and 2002-02:

For policies providing property insurance coverage, the following limitations continue to apply:

Exclusions for acts of terrorism for non-certified losses apply only if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 in property damage for related incidents that occur within a 72 hour period.

Exclusions for acts of terrorism for non-certified losses 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 continue to apply:

Exclusions for acts of terrorism for non-certified losses apply only if the acts of terrorism result in industry-wide insured losses that exceed \$25,000,000 in property damage for related incidents that occur within a 72 hour period; or

Fifty or more persons sustain death or serious physical injury. 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 for non-certified losses are not subject to 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.

### **III. Requirements for Illinois Terrorism Rate and Rule Filings**

NOTE:

This bulletin lists important laws and regulations for companies to know for terrorism rate and rule filings. However, companies must ensure that their rate and rule filings comply with all Illinois rate and rule laws and regulations before filing.

#### **Rating Information Required from All Companies**

All companies must file a Form RF-3 for any rate level change affecting any of the kinds of business enumerated in Class 2 and Class 3 of Section 4 of Illinois Insurance Code except: surplus lines, farm mutuals, reinsurance, ocean marine, aircraft, title insurance, accident and health, risk retention groups, self-insured captives, and inland marine risks which by general custom are not written according to manual rates or rating plans.

Companies are not required to file a Form RF-3 for rate level changes for individually rated risks.

NOTE:

If a rate change includes an increase or decrease in rate level due to terrorism, please state so in the Form RF-3 section titled "Brief description of filing."

### **Insurers that Must File Commercial Lines Rates and Rules**

TRIA does not change state laws or regulations regarding which insurers must file commercial lines rates and rules in Illinois.

Only licensed insurers must file rates and rules in Illinois. Section 445(12) of the Illinois Insurance Code exempts surplus lines insurers from filing rates and rules. In addition, risk retention groups, syndicates, farm mutuals, and licensed captives are not required to file rates and rules.

### **Commercial Lines Rates and Rules that Must be Filed**

TRIA does not change state laws regarding which commercial lines rates and rules must be filed with the Director.

Administrative Rules 754, 929, 2302, and 2902 (Title 50, IL Adm Code), require only the following commercial lines rates and rules to be filed in Illinois:

- taxicab,
- liquor liability,
- medical malpractice (not subject to TRIA),
- workers compensation, and
- group inland marine.

NOTE:

All other commercial lines rates and rules are not required to be filed with the Department.

### **Rates and Rules Temporarily Preempted from Prior Approval**

Illinois is prior approval only for group inland marine insurance rate and rule filings. Until 12-31-03, TRIA preempts the prior approval of such rates and rules, but only to the extent that the rates and rules relate to certified losses under TRIA.

Until 12-31-03, companies may submit group inland marine rate and rule filings on a use and file basis, but only to the extent that the rates and rules relate to certified losses under TRIA. Rates and rules must be filed with, i.e. received by, the Department within ten (10) days of their effective dates of use.



For group inland marine rates and rules that do not relate to certified losses under TRIA, prior approval still applies.

### **Rates and Rules to be Filed under Use and File**

For workers' compensation, liquor liability, and taxicab rate and rule filings, Illinois is use and file. TRIA does not preempt the use and file requirements. Companies must file rates and rules within the periods of time stated below:

- Workers Compensation -- Rates and rules must be filed with, i.e. received by, the Department within 30 days of use except for rating organization filings which must be received 30 days prior to use.
- Liquor Liability -- Rates and rules must be filed with, i.e. received by, the Department within 10 days of use.
- Taxicab -- Rates and rules must be filed with, i.e. received by, the Department within 10 days of use.

Companies are not required to file rate and rule information for individually rated risks.

## **IV. Requirements for Expedited Filing Review**

To receive an expedited review, filings must comply with all Illinois filing regulations and must be complete by including, at a minimum, the following information:

- a form filing cover letter, in duplicate, that includes the following information:
  - company name;
  - company FEIN #;
  - filing number (15 characters or less);
  - descriptive title of form, form number, and edition date of form;
  - listing of all policies for which the endorsements are being used;
  - effective date of use;
  - number of forms being filed;
  - notification of whether the filing is new or supersedes a present filing, and identification of all superseded filings;
  - all changes from currently filed forms must be highlighted;
- duplicate copies of the filing;
- a self-addressed stamped envelope large enough, and including enough postage, to return your stamped filed copy.

The Illinois Department of Insurance does not require the use of transmittal forms. However, the Department will not reject filings that include the NAIC transmittal form, as long as the above-required information is included.

Filings made via SERFF will be given review preference over paper filings.

The Department will expedite review of terrorism filings for *certified losses* by placing these filings ahead of all other filings. For terrorism filings for non-certified losses, the Department will expedite the filings as allowed by existing Department resources.

## **V. Additional Reminders for All Companies**

Insurers must comply with all laws regarding cancellation of commercial insurance policies, including but not limited to the following provisions: Sections 143.14, 143.16, 143.16a, and 143.23 of the Illinois Insurance Code.

Insurers must comply with all laws regarding renewal and nonrenewal of commercial insurance policies, including but not limited to the following: Sections 143.17 and 143.17a of the Illinois Insurance Code pertaining to nonrenewal of commercial insurance policies, and renewal of commercial insurance policies with material change in coverages, deductibles or increase in premium.

## **VI. Withdrawal of Company Bulletins 2001-11 and 2002-02**

The Department has included in this bulletin any provisions that remain in effect from previously issued Company Bulletins 2001-11 and 2002-02. Any provisions contained in those bulletins and not transferred to this bulletin are no longer required. Company Bulletins 2001-11 and 2002-02 are hereby withdrawn and are no longer effective.

## **VII. Effective Date**

This bulletin shall take immediate effect. The preemption of prior approval requirements shall expire on December 31, 2003. The remainder of the bulletin shall expire on December 31, 2005 unless Congress extends the duration of TRIA.

## **VIII. Additional Information Resources:**

NAIC's model terrorism bulletin, expedited filing transmittal form, model terrorism disclosure notices, TRIA summary, and help with Treasury Interim Guidance documents:

<http://www.naic.org/pressroom/releases/EmergencyResponse.htm>

U.S. Department of Treasury website, including full text of Terrorism Risk Insurance Act of 2002, interim guidance documents, and final interim rule:

<http://www.treasury.gov/offices/domestic-finance/financial-institution/terrorism-insurance/>