



Pennsylvania Compensation Rating Bureau

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January 15, 2003

BUREAU CIRCULAR NO. 1452

To All Members of the Bureau:

RE: **TERRORISM RISK INSURANCE ACT OF 2002 (TRIA 2002)**

H.R. 3210 was enacted by the U.S. House of Representatives and Senate and was signed into law by the President on November 26, 2002. This circular is to advise all Bureau members of important provisions of the captioned legislation and to make you aware of steps the Bureau has taken and will be taking in response thereto.

A complete copy of this legislation is available at various locations on the Internet, including the following:

<http://news.corporate.findlaw.com/hdocs/docs/insurance/tria112602.pdf>

The above link may require selection of a state from a provided menu prior to displaying the text of TRIA 2002. All members are encouraged to read the entire text of this legislation in order to most appropriately and efficiently comply with its several provisions.

Substantial authority and responsibility under TRIA 2002 rests with the U. S. Department of the Treasury. To date, the Department of the Treasury has issued two statements providing interim guidance with respect to the implementation of TRIA 2002. Those respective statements may be found at the following Internet addresses:

<http://208.45.140.254/press/releases/po3663.htm>

<http://208.45.140.254/press/releases/po3704b.htm>

Policyholder Notice - Forms

One of the conditions for eligibility for federal payments in instances of certified acts of terrorism under TRIA 2002 is that insurers must provide specified notice to each policy-holder. The required notice is set forth in Section 103 (b) (2), which precludes federal payment unless:

...the insurer provides clear and conspicuous disclosure to the policy-holder of the premium charged for insured losses covered by the Program and the Federal share of compensation for insured losses under the Program –

- (A) in the case of any policy that is issued before the date of enactment of this Act, not later than 90 days after that date of enactment;
- (B) in the case of any policy that is issued within 90 days of the date of enactment of this Act, at the time of offer, purchase, and renewal of the policy; and
- (C) in the case of any policy that is issued more than 90 days after the date of enactment of this Act, on a separate line item in the policy, at the time of offer, purchase and renewal of the policy;

The National Association of Insurance Commissioners (NAIC) has published two model forms of notification for use in complying with the notice requirements incorporated in Sections 103 (b) (2) (A) and 103 (b) (2) (B) above. One version of this model notification includes reference to coverage exclusions for terrorism losses and, thus, does not apply to workers compensation coverage. The other notification form is appropriate for workers compensation coverage. The NAIC model notification form includes provision for the name of the insurer and policy number. In order to efficiently and accurately match notification forms with other related policy documents, the Bureau would need the name of the employer and the effective date of the policy to which notice applies in addition to the information incorporated on the form as published by the NAIC.

An endorsement form addressing requirements of TRIA 2002, WC 00 04 20, has also been established for use in a number of jurisdictions.

A Bureau filing was submitted to the Pennsylvania Insurance Department and has subsequently been approved by the Department, adopting the NAIC model notice (with the addition of employer name and policy effective date) and WC 00 04 20 as alternative means of complying with interim notification requirements under TRIA 2002, effective November 26, 2002. Specimen copies of these respective forms accompany this circular. Carriers wishing to use alternative forms for purposes of policyholder notification under TRIA 2002 must file such forms with the Pennsylvania Insurance Department prior to their use and should also consider verifying such forms' acceptability under TRIA with the Department of the Treasury.

Members are reminded that the execution clause for endorsement forms is applicable to WC 00 04 20, which will initially be issued after and separate from the policies to which the endorsements will apply.

Policyholder Notice – Content

TRIA 2002 requires that policyholders be advised regarding the "...premium charged for insured losses covered by the Program and the Federal share of compensation for losses insured under the Program...." To date, no losses that would have been covered by the Program had it been in effect have ever been included in the Bureau's promulgation of rates or loss costs in Pennsylvania. Accordingly, in the near term one appropriate indication for the premium charged for insured losses covered by the Program would be "\$0."

Policyholder Notice – Timing

The Bureau is not presently aware of any definitive guidance or interpretation that has been provided to the industry concerning what the word "issued" means in the context of Section 103. Two (but perhaps not all) possible interpretations of this language are that: (1) "issued" means that a policy has been bound and sent to the policyholder by the specified date, and (2) that a policy is effective on the specified date. Generally, of course, the former interpretation would include more policies and some policies with later effective dates than would the latter interpretation as applied to a common threshold date. Without the benefit of a definitive pronouncement from the Department of the Treasury in this regard, the Bureau perceives the following approaches as providing an increased level of protection for carriers:

For purposes of Section 103 (b) (2) (A), it would seem that a carrier providing notice to holders of all policies either in force on November 26, 2002 or for which coverage had been bound and a policy sent to the policyholder would be in compliance with most potential interpretations of TRIA 2002.

For purposes of Section 103 (b) (2) (B), it would seem that a carrier providing notice to holders of all policies either with effective dates after November 26, 2002 but not more than 90 days after November 26, 2002 or for which coverage was bound and a policy is/was sent to the policyholder during the 90 days immediately after November 26, 2002 would be in compliance with most potential interpretations of TRIA 2002.

For purposes of Section 103 (b) (2) (C), it would seem that a carrier providing notice to holders of all policies either having effective dates more than 90 days after November 26, 2002 or for which coverage is bound and a policy sent to the policyholder more than 90 days after November 26, 2002 would be in compliance with most potential interpretations of TRIA 2002.

Unfortunately, it is conceivable that some individual policies would qualify for two of the three notice requirements described above, as outlined below:

- Sections 103 (b) (2) (A) and 103 (b) (2) (B) might each apply if a policy was bound and sent to the policyholder before November 26, 2002 with an effective date of coverage after, but within 90 days of, November 26, 2002.

- Sections 103 (b) (2) (B) and 103 (b) (2) (C) might each apply if a policy was bound and sent to the policyholder after but within 90 days of November 26, 2002 with an effective date of coverage more than 90 days after November 26, 2002.
- Sections 103 (b) (2) (A) and 103 (b) (2) (C) might each apply if a policy was bound and sent to the policyholder before November 26, 2002 with an effective date of coverage more than 90 days after November 26, 2002.

Individual carrier legal counsel should be consulted in determining procedures to be used in providing policyholder notice under TRIA 2002. Carriers may elect to provide notice to their policyholders under a single criteria selected with the benefit of advice from legal counsel, and/or they might elect to provide multiple notices to some policy-holders in an attempt to comply with alternative interpretations of the law similar to the considerations outlined above.

Policyholder Notice – Premium Charges as Line Items on Policies

The Bureau has filed and the Insurance Department has approved a statistical code, 9740, for use in Pennsylvania effective November 26, 2002. This statistical code relates to premium charged for terrorism losses covered under TRIA 2002 (so-called “certified” terrorism losses). This premium charge is to be calculated at the end of the Premium Calculation Algorithm, so that the charge is not subject to modification or adjustment by or for any other pricing program(s). A copy of the revised Premium Calculation Algorithm accompanies this circular for reference. (NOTE: Additional changes to the Premium Calculation Algorithm unrelated to TRIA 2002, previously proposed in Bureau Filing No. 204, have also been approved with an optional effective date of November 26, 2002 and a mandatory effective date of October 1, 2004.)

For policies effective on a new and renewal basis with normal anniversary rating dates prior to April 1, 2003, carriers using Statistical Code 9740 as a line item in their policies to comply with TRIA 2002 can show the premium charge as “\$0.” (See Rating Value Adoption in Response to TRIA 2002 below for information pertaining to policies effective on a new and renewal basis with normal anniversary rating dates on or after April 1, 2003.)

Rating Value Adoption in Response to TRIA 2002

The Bureau has adopted a loss cost charge of \$0.03 per \$100 of payroll pertaining to certified terrorism losses under TRIA 2002, effective on a new and renewal basis for policies with normal anniversary rating dates on or after April 1, 2003. The deferred effective date has been chosen recognizing provisions of Act 86 (which the Bureau does not believe were affected by TRIA 2002), which require notification at least 60 days in advance of policy effective date for any increase in workers compensation premiums.

No rating value(s) has/have been adopted to apply to any classification(s) for which the applicable exposure base is not payroll.

Unless carriers take action to the contrary in the form of individual filings with the Insurance Department, the loss cost charge adopted by the Bureau will be subject to application of the carrier's approved loss cost multiplier effective April 1, 2003 to determine the carrier's rate for terrorism exposures certified under TRIA 2002. Carriers using different loss cost multipliers for one or more classifications are directed to apply their loss cost multiplier that applies to the greatest number of classifications to the derivation of a rate for Code 9740. Carriers wishing to establish a rate for Code 9740 by means of any practice other than that outlined above must file such practice with the Pennsylvania Insurance Department. If a carriers feels that the determination of "their loss cost multiplier that applies to the greatest number of classifications" is problematic, they should consult with the Pennsylvania Insurance Department to arrive at a mutually-agreed loss cost multiplier selection for Code 9740.

Additional updates related to TRIA 2002 will be provided as appropriate, reflecting actions that may be taken by the U. S. Department of the Treasury, Pennsylvania Insurance Department and the Bureau, respectively.

Should any member have questions or comments pertaining to the subject matter of this circular, they may be directed to the attention of the following Bureau staff:

Statistical reporting questions: Bonnie Piacentino, Extension 223, bpacentino@pcrb.com

Policy reporting questions: Betty Ann Campbell, Extension 218, bcampbell@pcrb.com

Other questions: Bruce Decker, Extension 211, bdecker@pcrb.com

Timothy L. Wisecarver
President

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Remember to visit our website at www.pcrb.com for more information about this and other topics.

POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE

Coverage for acts of terrorism is already included in your current policy. You should know that, effective November 26, 2002, under your existing coverage, any losses caused by certified acts of terrorism would be partially reimbursed by the United States under a formula established by federal law. Under this formula, the United States pays 90% of covered terrorism losses exceeding the statutorily established deductible paid by the insurance company providing the coverage. The portion of your annual premium that is attributable to coverage for acts of terrorism is: \$_____.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT OF 2002, ANY LOSSES CAUSED BY CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE WILL BE PARTIALLY REIMBURSED BY THE UNITED STATES AND I HAVE BEEN NOTIFIED OF THE AMOUNT OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Policyholder/Applicant's Signature

Print Name

Date

Name of Insurer: _____

Policy Number: _____

Policy Effective Date: _____

Name of Employer: _____

DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers compensation.

ITEM B-1383—CATASTROPHE PROVISION—CERTIFIED TERRORISM LOSSES (AS DEFINED IN TERRORISM RISK INSURANCE ACT OF 2002)

WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 00 04 20

TERRORISM RISK INSURANCE ACT ENDORSEMENT

This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

“Act” means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments.

“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 as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has 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.

“Insured terrorism or war 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 the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

“Insurer deductible” means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.

ITEM B-1383—CATASTROPHE PROVISION—CERTIFIED TERRORISM LOSSES (AS DEFINED IN TERRORISM RISK INSURANCE ACT OF 2002)

Limitation of Liability

The Act may limit our liability to you under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if we have met our insurer deductible, the amount we will pay for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Policyholder Disclosure Notice

1. Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States Government would pay 90% of our insured terrorism or war losses exceeding our insurer deductible.
2. The additional premium charged for the coverage this policy provides for insured terrorism or war losses is shown in Item 4 of the Information Page or the Schedule below.

Schedule

State

Rate per \$100 of Remuneration

Note:

1. This endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002.
2. This endorsement is effective 12:01 a.m. on December 20, 2002 applicable to new and renewal voluntary policies only.
3. This endorsement is effective 12:01 a.m. on January 1, 2003 applicable to new and renewal assigned risk policies only.

Premium Calculation Algorithm

Line #	Item Name	Associated Statistical Code	Line #	Source & Derivation
(1)	Classification	XXXX	(1)	Carrier value
(2)	Exposure	XXXX	(2)	Risk characteristic
(3)	Carrier Rating Value	XXXX	(3)	Carrier value
(4)	Classification Manual Premium		(4)	(2)/100x(3) if classification has payroll exposure. Special procedures apply to non-payroll classes
(5)	Total Policy Manual Premium		(5)	Sum of (4) for all classifications on the policy
(6)	Employer Liability Increased Limits Factor	XXXX	(6)	Carrier value
(7)	Employer Liability Increased Limits Premium Charge		(7)	(5) x [(6) expressed as a decimal]
(8)	Minimum Premium Employer Liability Increased Limits	9848	(8)	Carrier value
(9)	Minimum Premium Employer Liability Increased Limits Premium Charge	9848	(9)	[(8)-(7)] if (7)<(8) and (6) >0, otherwise zero
(10)	Subject Deductible Credit Percentage	9664	(10)	Carrier value
(11)	Subject Deductible Premium Credit	9664	(11)	[(5)+(7)+(9)]x[(-10) expressed as a decimal]
(12)	Waiver of Subrogation Charge	0930	(12)	Carrier value - subject to experience modification
(13)	Waiver of Subrogation Premium	0930	(13)	Value from Line (12)
(14)	Total Subject Premium		(14)	[(5)+(7)+(9)+(11)+(13)]
(15)	Experience Modification	9898	(15)	Zero for non-experience-rated risks
(16)	Modified Premium		(16)	(14) x (15)
(17)	Merit Rating Credit Factor	9885	(17)	Zero if Merit Rating Credit does not apply
(18)	Merit Rating Credit	9885	(18)	(14) x [(-17) expressed as a decimal]
(19)	Merit Rating Neutral Factor	9884	(19)	Zero whether Merit Rating Neutral Adjustment (no credit or debit) does or does not apply

<u>Line #</u>	<u>Item Name</u>	<u>Associated Statistical Code</u>	<u>Line #</u>	<u>Source & Derivation</u>
(20)	Merit Rating Neutral Adjustment	9884	(20)	(14)x [(19) expressed as a decimal]
(21)	Merit Rating Debit Factor	9886	(21)	Zero if Merit Rating Debit does not apply
(22)	Merit Rating Charge	9886	(22)	(14)x [(21) expressed as a decimal]
(23)	Premium After Experience Modification or Merit Rating		(23)	(16) if Experience-Rated, [(14)+(18) + (20) + (22)] if Merit-Rated, (14) if Non-Rated
(24)	Non-Ratable Classifications	XXXX	(24)	<u>Carrier Value</u>
(25)	Non-Ratable Classifications Exposure		(25)	Portion of payroll exposure subject to Non-Ratable Classifications
(26)	Non-Ratable Classification Rating Value	XXXX	(26)	Carrier value
(27)	Non-Ratable Classification Premium		(27)	(25)/100x(26) [based on applicable Non-Ratable Classification exposure]
(28)	Aircraft Seat Surcharge Exposure (# of seats)	9108	(28)	Actual number of seats for insured risk. Subject to maximum 10 seats per aircraft
(29)	Aircraft Seat Surcharge	9108	(29)	Carrier value
(30)	Aircraft Seat Surcharge Premium Charge	9108	(30)	(28) x (29)
(31)	Workfare Program Employees Exposure (PA)	0982	(31)	Number of person weeks. A partial workweek for any worker to be counted as 1 person week.
(32)	Workfare Program Employees Rating Value (PA)	0982	(32)	<u>Carrier value</u>
(33)	Workfare Program Employees Premium (PA)	0982	(33)	(31) x (32)
(34)	Non-Ratable Classification Premium Total		(34)	Sum of all (27)+(30)+(33) premiums
(35)	Non-Ratable Classification Increased Limits Factor	XXXX	(35)	Carrier value
(36)	Non-Ratable Classification Increased Limits Premium Charge	XXXX	(36)	(34) x [(35) expressed as a decimal]
(37)	Minimum Premium Non-Ratable Classification Increased Limits	9848	(37)	Carrier value
(38)	Minimum Premium Non-Ratable Classification Increased Limits Premium Charge	9848	(38)	[(37)-(36)] if (36) < (37) and (35) > 0, otherwise zero

Line-#	Item Name	Associated Statistical Code	Line #	Source & Derivation
(39)	Premium Before Schedule Rating		(39)	(23)+(34)+(36)+(38)
(40)	Schedule Rating Plan Adjustment Factor	9887/9889	(40)	Carrier value - use 9887 for schedule credits and 9889 for schedule debits.
(41)	Schedule Rating Plan Premium Adjustment	9887/9889	(41)	(39) x [(40) expressed as a decimal]. For schedule credits Line (41) will be negative.
(42)	Certified Safety Committee Credit Factor (PA)	9890	(42)	Credit applies if insured is certified.
(43)	Certified Safety Committee Premium Credit (PA)	9890	(43)	[(39)+(41)] x [(-42) expressed as a decimal]
(44)	Workplace Safety Program Credit Factor (DE)	9880	(44)	Credit applies if insured qualifies
(45)	Workplace Safety Program Premium Credit (DE)	9880	(45)	[(39)+(41)] x [(-44) expressed as a decimal]
(46)	Construction Classification Premium Adjustment Program Credit Factor	9046	(46)	Based on wage level(s), application to rating organization
(47)	Construction Classification Premium Adjustment Program Premium Credit	9046	(47)	[(39)+(41)] x [(-46) expressed as a decimal]
(48)	Drug-Free Workplace Factor (DE)	9846	(48)	Carrier value
(49)	Drug-Free Workplace Credit (DE)	9846	(49)	[(39)+(41)+(45)+(47)] x [(-48) expressed as a decimal]
(50)	Managed Care Factor (DE)	9874	(50)	Carrier value
(51)	Managed Care Credit (DE)	9874	(51)	[(39)+(41)+(45)+(47)+(49)] x [(-50) expressed as a decimal]
(52)	Package Credit Factor (DE)	9721	(52)	Carrier value
(53)	Package Credit (DE)	9721	(53)	[(39)+(41)+(45)+(47)+(49)+(51)] x [(-52) expressed as a decimal]
(54)	Premium After Managed Care and Package Credit If Applicable		(54)	[(39)+(41)+(43)+(45)+(47)+(49)+(51)+(53)]

Line #	Item Name	Associated Statistical Code	Line #	Source & Derivation
(55)	Assigned Risk Surcharge Factor (DE)	0277	(55)	May apply to some or all assigned risks based on plan and characteristics of individual insured
(56)	Assigned Risk Premium Surcharge (DE)	0277	(56)	(54) x [(55) expressed as a decimal]
(57)	Deductible Credit Factor	9663	(57)	Carrier value
(58)	Deductible Premium Credit	9663	(58)	[(54)+(56)] x [(-57) expressed as a decimal]
(59)	Loss Constant	0032	(59)	Carrier value - may vary based on risk premium size
(60)	Loss Constant Charge	0032	(60)	Line (59) if applicable
(61)	Short Rate Cancellation Factor	0931	(61)	Carrier value - zero if short rate cancellation does not apply
(62)	Short Rate Premium	0931	(62)	[(54)+(56)+(58)+(60)] x [(61)-1.0000] if (61) > 0, otherwise zero
(63)	Expense Constant	0900	(63)	Carrier value if applicable
(64)	Expense Constant Charge	0900	(64)	Line (63)
(65)	Minimum Premium	0990	(65)	Carrier value
(66)	Minimum Premium Charge	0990	(66)	If (65)>[(54)+(56)+(58)+(60)+(62)+(64)], (65) - [(54)+(56)+(58)+(60)+(62)+(64)], otherwise zero
(67)	Unit Statistical Report Total Standard Premium		(67)	[(54)+(56)+(58)+(60)+(62)+(66)]
(68)	Premium Discount Amount	0063/0064	(68)	Carrier value based on [(54)+(56)+(58)+(60)+(62)+(66)]
(69)	Additional premium Wavier of Subrogation (flat charge)	9115	(69)	Carrier value(s)
★(70)	Terrorism Premium Charge	9740	(70)	(Total payroll / 100) x carrier rating value
★ (71)	Total Policy Premium Subject to Employer Assessment		(71)	(64)+(67)-(68)+(69)+(70)
(72)	Employer Assessment Factor Pursuant to Act 57 of 1997 (PA)	0938	(72)	Bureau value for the specific purpose of computing employer assessments
(73)	Employer Assessment Amount Pursuant to Act 57 of 1997 (PA)	0938	(73)	[(71)-(11)-(58)] x (72) NOTE: Cells (11) and (58) are credits. Subtracting these credits as shown effectively adds the premium reduction given for deductible coverage back into the premium for purposes of calculating employer assessments.