



Pennsylvania Compensation Rating Bureau

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January 30, 2003

BUREAU CIRCULAR NO. 1455

To All Members of the Bureau:

Re: **TERRORISM RISK INSURANCE ACT OF 2002 (TRIA 2002)**
ADDITIONAL INFORMATION AND RESPONSES TO QUESTIONS
PERTAINING TO BUREAU CIRCULAR NO. 1452

Since issuing Bureau Circular No. 1452, the Bureau has become aware of additional resources available to all members in complying with TRIA 2002. In addition, the Bureau has prepared and is providing herewith answers to a number of questions that have arisen with respect to TRIA 2002 and Bureau Circular No. 1452.

All members are advised that the Pennsylvania Insurance Department has published a notice pertaining to the Federal Terrorism Risk Insurance Act of 2002. The Department's notice (No. 2003-02) appeared in the January 18, 2003 edition of the Pennsylvania Bulletin (Volume 33, No. 3) and is reproduced in its entirety below:

NOTICES

Federal Terrorism Risk Insurance Act of 2002; Notice 2003-02

[33 Pa.B. 456]

The Insurance Department (Department) is publishing notice that Congress recently enacted and the President has signed into law the Terrorism Risk Insurance Act of 2002 (H.R.3210) (act). This Federal law provides a Federal backstop for defined acts of terrorism and imposes certain obligations on insurers.

The Department has adopted a bulletin with regard to the act. The intent of this bulletin is to advise insurers of certain provisions of the act that may require them to submit a filing in this Commonwealth and to inform them regarding a voluntary procedure for insurers to use to expedite the filing and timely review of the disclosure notices, policy language and the applicable rates that are discussed in the act.

The bulletin has been posted in its entirety on the Department's website, <http://www.insurance.state.pa.us>. Specific questions relating to information provided in the bulletin may be directed to Pamela Seymore, Office of Rate and Policy Regulation, 1345 Strawberry Square, Harrisburg, PA 17120, (717) 787-4192, pseymore@state.pa.us.

M. DIANE KOKEN,
Insurance Commissioner

[Pa.B. Doc. No. 03-116. Filed for public inspection January 17, 2003, 9:00 a.m.]

In addition, all members are advised that on January 22, 2003 the U. S. Department of the Treasury issued a third interim guidance regarding TRIA 2002. That guidance is available on the U. S. Department of Treasury's web site at the following address:

<http://208.45.140.254/press/releases/reports/interimguidance.htm>

The Bureau is publishing the following questions and/or comments that have been brought to our attention since the publication of Bureau Circular No. 1452, with applicable responses for the benefit of all Bureau members.

Question: Bureau Circular No. 1452 cited the notice period required for premium increases under Act 86 of 1986 as being 60 days. The notice period actually mandated by that law is 30 days. Further, the Insurance Department bulletin recently released pertaining to terrorism includes the following language: "...Thus a system is created where insurers can immediately implement prospective rate changes for coverage of *insured losses* related to *acts of terrorism* as defined in the Act..." What is the status of premium charges for terrorism with respect to Act 86?

Bureau Response: First, the Bureau would acknowledge that the notice period for premium increases under Act 86 of 1986 is, in fact, 30 days rather than 60 days as stated in Bureau Circular No. 1452. The Bureau apologizes for this error. While the Bureau perceived and perceives potential arguments distinguishing Act 86 requirements from "prior approval" and/or "waiting periods" under state rating laws, the language of the Department's bulletin does suggest in retrospect that the Bureau's election to begin applying Code 9740 premium charges to new and renewal policies effective April 1, 2003 for policies having normal anniversary rating dates on or after that date may have amounted to applying an abundance of caution to the implementation process for those charges.

Question: If a Bureau member wishes to implement premium charges for insured losses related to acts of terrorism other than the adoption of the PCRB loss cost subject to application of the company's most common loss cost multiplier, would such implementation be subject to provisions of Act 86?

Bureau Response: While the Bureau would ultimately defer to the authority of the Insurance Department in this matter, the language presented in the Department's bulletin and reproduced above would suggest that Act 86 requirements would not apply to carrier implementation of premium charges for insured losses related to acts of terrorism. Carriers adopting independent premium charges for Code 9740 should so advise both the Pennsylvania Insurance Department and the Bureau.

Question: Does or will the Bureau require carriers to submit copies of notices given to policyholders using the notice form adapted from the NAIC model form to the Bureau?

Bureau Response: No. If carriers do submit copies of such notices to the Bureau, they will be processed in a manner consistent with other policy information pages, endorsements and related documents. Carriers may elect **not** to submit copies of these notices to the Bureau, in which event the Bureau will simply not have or be able to provide a file copy of those notices.

Question: If a member files policy information with the Bureau electronically and wishes to submit copies of the notice form adapted from the NAIC model form electronically, is there a form number to be used for such purpose?

Bureau Response: No. Given the relatively short period of time during which notice under TRIA is to be given in some fashion other than as a line item in the policy, an electronic form number has not been established for the NAIC notification form.

Question: Endorsement WC 00 04 20 includes footnotes reflecting NCCI's adopted effective dates, December 20, 2002 for voluntary market business and January 1, 2003 for residual market business. However, the Pennsylvania Bureau has filed this endorsement effective November 26, 2002. What is/are the effective date(s) for WC 00 04 20 in Pennsylvania?

Bureau Response: The Bureau is mindful of the difference between the footnote to WC 00 04 20 and the announced effective date for this endorsement form in Pennsylvania. In choosing between the options of crafting a Pennsylvania-specific form (either without footnotes or with footnotes differing from those of the NCCI form) or allowing the industry the opportunity to use a common form across all states, the Bureau elected for the latter convenience. Notwithstanding the text of footnotes in WC 00 04 20, carriers are at liberty to use this endorsement form effective November 26, 2002 in Pennsylvania should they so choose.

Question: Are carriers required to submit copies of endorsement WC 00 04 20 -Terrorism Risk Insurance Act of 2002 to the Bureau?

Bureau Response: Yes. Consistent with requirements applicable to other endorsement forms, carriers using endorsement WC 00 04 20 are required to submit copies to the Bureau.

Instructions for submitting WC 00 04 20 are as follow:

A: For new and renewal policies “already issued” with normal anniversary rating dates prior to November 26, 2002:

For hard copy submissions:

Issue a revised (replacement) policy showing endorsement WC 00 04 20 under Item 3D on the policy Information Page or attach the actual endorsement document to the policy. The premium must be reported under Statistical Code 9740 in Item 4 of the policy Information Page. Unless a carrier has independently established a charge for Code 9740 effective prior to April 1, 2003, the premium attributable to Code 9740 would be \$0.

Note: As provided by prevailing Bureau practice as respects hard copy policy submissions, carriers submitting policies in hard copy format will be charged a policy processing charge for replacement policies as described above.

or

Issue an endorsement form WC 00 04 20, Terrorism Risk Insurance Act of 2002. Also attach an endorsement (may use WC 89 06 00 A –“x” Item 4) indicating Statistical Code 9740 with the applicable total standard premium and rate, showing the premium for Code 9740 in Pennsylvania as \$0 unless the carrier has independently established a charge for Code 9740 effective prior to April 1, 2003.

On electronic submissions:

Issue a Full Policy Replacement Transaction (Transaction Codes 08-15) with endorsement WC 00 04 20 reported on the Endorsement Identification Record (Record Type 07). The premium is submitted on an Exposure Record (Record Type 05) under Statistical Code 9740. This premium is not included in the Total Estimated State Standard Premium (Record Type 04) or the Policy Total Estimated Standard Premium (Record Type 01). Unless the carrier has independently established a charge for Code 9740 effective prior to April 1, 2003, the premium attributed to Code 9740 would be \$0.

B: For new and renewal policies “not yet issued” with a normal anniversary rating dates on or after November 26, 2002 and prior to April 1, 2003:

On hard copy submissions:

Issue the policy showing endorsement number WC 00 04 20 under Item 3D on the policy Information Page or attach the actual endorsement document to the policy. The premium is reported under Statistical Code 9740 under Item 4 of the policy Information Page. Unless the carrier has independently established a charge for Code 9740 effective prior to April 1, 2003, the premium attributed to Code 9740 would be \$0.

On electronic submissions:

Issue the policy with endorsement WC 00 04 20 reported on the Endorsement Identification Record (Record Type 07). The premium is submitted on an Exposure Record (Record Type 05) under Statistical Code 9740. This premium is not included in the Total Estimated State Standard Premium (Record Type 04) or the Policy Total Estimated Standard Premium (Record Type 01). Unless the carrier has independently established a charge for Code 9740 effective prior to April 1, 2003, the premium attributed to code 9740 would be \$0.

C: For new and renewal policies “not yet issued” with a normal anniversary rating dates on or after April 1, 2003:

All prevailing instructions for hard copy and/or electronic policy reporting will apply.

Question: Is the Bureau applying the anniversary rating date rule to determinations of the application of premium charges under Code 9740?

Bureau Response: Yes. If the anniversary rating date for a policy differs from the policy effective date, all rules, classifications and carrier rating values would apply as of the next anniversary rating date. As an example, if a policy is effective December 1, 2002 and has an anniversary rating date of April 1, 2003, the premium debit generated under Code 9740 would be effective on this policy as of April 1, 2003 (the policy’s anniversary rating date).

Question: Must companies begin applying Code 9740 effective April 1, 2003?

Bureau Response: Absent a carrier filing to the contrary, each carrier's most common current loss cost multiplier in effect as of April 1, 2003 does apply to the Bureau loss cost of \$0.03 in determining premium charges for Code 9740. However, this default procedure may be modified by carrier actions on an ongoing basis. Companies specifically wishing to defer application of Code 9740 charges may file and use a loss cost multiplier of zero for Code 9740 until such time as they elect to begin applying charges under Code 9740.

Question: Must carriers apply their most common loss cost multiplier to the Bureau loss cost to derive their Code 9740 rates?

Bureau Response: No. As stated in the previous response, this is the default procedure. Carriers may elect to use a different loss cost and/or to apply a specified loss cost multiplier other than their own most common factor in deriving applicable Code 9740 rates. Such decisions should be communicated to the Pennsylvania Insurance Department and to the Bureau to allow appropriate recognition of and accounting for the resulting carrier rating values.

Question: Are commissions payable on Code 9740 charges?

Bureau Response: Commissions are established under mutual contracts between producers and carriers, and the Bureau cannot provide definitive guidance as to how such agreements may or may not treat Code 9740 charges. The Bureau does consider Code 9740 charges to be "premium," generally subject to the same treatment as other components of "premium" including payment of premium tax and being included in the base to which employer assessments under Code 0938 apply in Pennsylvania.

As previously announced, additional updates pertaining to TRIA 2002 will be provided as appropriate, reflecting actions of the U. S. Department of the Treasury, Pennsylvania Insurance Department and/or 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

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