

MARKET BULLETIN

From	Director, Worldwide Markets (extn 6677)
Date	18 May 2006
Reference	Y3815
Subject	US Terrorism Risk Insurance Act: Interim Final Rule Implementing TRIA Extension
Subject areas	US Commercial P & C business
Attachments	None
Action points	Underwriters and managing agents to note the changes made following the enactment of TRIEA and that the US Treasury Department proposes to adopt the Interim Final Rule as a Final Rule.
Deadlines	Immediate

Purpose of bulletin

To inform the market that the US Treasury Department has released an Interim Final Rule as part of its implementation of changes to the Terrorism Risk Insurance Program following amendment of the Terrorism Risk Insurance Act of 2002 ("TRIA") by the Terrorism Risk Insurance Extension Act of 2005 ("TRIEA"). Details of TRIEA and the Interim Guidance issued following its enactment are covered by Lloyd's market bulletins Y3706, dated 20 December, 2005 and Y3719, dated 30 December, 2005.

Interim Final Rule Implementing TRIA Extension

The Interim Final Rule may be found on the US Treasury website at: [Interim Final Rule](#)

This Rule will not become effective until a Final Rule is published, following a period of public comment that expires on 12 June, 2006.

Highlights of the Interim Final Rule are set out in the attached appendix.

Responses to the Proposed Rule

Worldwide Markets and Lloyd's US General Counsel, in conjunction with the LMA, are reviewing the Interim Final Rule to determine how the Lloyd's market should respond to US Treasury.

Further information

If you have any queries about this market bulletin, please contact Lloyd's Worldwide Market Services:

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This market bulletin has been sent to active underwriters and to the compliance officers of managing agents and Lloyd's brokers.

Julian James
Director,
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Appendix 1

Interim Final Rule Implementing TRIA Extension

The following highlights are taken from advice received from LeBoeuf, Lamb, Greene & MacRae LLP:

Covered Lines

The Interim Final Rule reiterates US Treasury's previous guidance that it will use NAIC line of business definitions to implement the Act. The scope of covered lines in TRIA continues to be determined by reference to specific lines designated by US Treasury on Statutory Page 14 of the National Association of Insurance Commissioners ("NAIC") Annual Statement.

Consistent with previous Interim Guidance, the definition of "professional liability insurance" in the Interim Final Rule is derived from the definition of "Professional Errors and Omissions Liability" in the Uniform Property and Casualty Matrix used by the NAIC's System for Electronic Rate and Form Filing ("SERFF"). However, US Treasury has clarified in the Preamble that, since many insurers do not use SERFF, the Interim Final Rule should not be interpreted as limiting the definition of "professional liability insurance" to a particular SERFF filing code.

This definition of "professional liability insurance" does not include directors and officers liability which continues to fall under TRIA's definition of "property and casualty insurance." US Treasury recommends consulting the definition of "Directors & Officers Liability" in the Uniform Property and Casualty Matrix used by SERFF for guidance on what constitutes "directors and officers liability insurance" for TRIA purposes.

The preamble to the Interim Final Rule also clarifies that US Treasury interprets the exclusion of "farm owners multiple peril insurance" under TRIEA to apply only to multiple peril coverages. Single peril and monoline coverages for farm risks are included under the Program.

Program Trigger and Federal Share of Compensation

TRIEA added a new requirement that insurers cannot receive Federal TRIA compensation unless aggregate industry insured losses from a certified act exceed certain insured loss or "Program Trigger" amounts. The Program Trigger is \$50 million in 2006 and \$100 million in 2007 and applies only to acts of terrorism which occur after 31 March, 2006.

Application is based on the date of occurrence, not the date of certification as an act of terrorism. The Interim Final Rule incorporates these amounts under both the definition of "Program Trigger event" and new provisions concerning the amount of Federal compensation payable under the Act. As noted in the Interim Guidance, US Treasury will determine whether the Program Trigger has been met and will publish notice in the Federal Register and on the TRIA website if an act of terrorism is a Program Trigger event.

The Interim Final Rule also provides that the Federal Share of compensation in Program Year 5 shall be 85 percent of the portion of the insurer's aggregate insured losses that exceed its insurer deductible during that program year, subject to certain adjustments and the \$100 billion Program cap.

US Treasury has also amended the provisions concerning the Federal Share of compensation to clarify that, for purposes of the claim procedures, insured losses or aggregate insured losses for post-March 31, 2006 acts of terrorism will be limited to insured losses resulting from Program Trigger events.

Consistent with the Interim Guidance, US Treasury contends that losses do not count toward satisfaction of the insurer deductibles until the Program Trigger is hit. This means, for example, that a series of losses each at least meeting the \$5 million certification threshold but not meeting the applicable Program Trigger (e.g., \$ 50 million in 2006 and \$100 million in 2007) would not count against the individual insurer's deductible if a subsequent event or events hit the Program Trigger in that year. Only losses above the Program Trigger would count against the deductible.

Make Available Requirement

Following the extension of TRIA, US Treasury's Interim Guidance instructed insurers to make coverage available in 2006 on in-force policies only if the policyholder took up the coverage in 2005. If the policyholder declined coverage in 2005, no further notice was required until renewal. Insurers who used conditional terrorism exclusions that provided TRIA coverage in 2006 if TRIA was enacted under certain circumstances were not required to issue new policyholder notices. Insurers were required to make coverage available for the remaining two years of the Program on new and renewal policies incepting after December 31, 2005. US Treasury considered 31 January, 2006 the latest reasonable date for making coverage available.

US Treasury's most recent issuance generally incorporates its previous guidance along with two new clarifications:

- First, the Interim Final Rule includes technical amendments which provide that property and casualty coverage for insured losses is not required beyond the December 31, 2007 Program termination date. The rule also clarifies that such coverage is not required beyond the termination date even if the policy period for coverage of losses from events other than terrorism extends beyond 2007.
- Second, the preamble to the Interim Final Rule clarifies that excess or umbrella coverage constitutes commercial property and casualty insurance under the Program only to the extent that the primary or underlying coverage falls under a covered line. However, excess or umbrella liability policies which only provide incidental commercial property and casualty coverage (e.g., less than 25 percent of the total policy premium) fall outside of the scope of the Program. US Treasury has determined that the analysis applicable to hybrid policies under

Section 50.5(d) (1) (iii) and (iv) of the existing regulations also applies to excess and umbrella liability policies that include both TRIA-covered and TRIA-excluded lines.

Disclosure Notices

US Treasury has noted that, given the late enactment of TRIEA, some insurers may have issued policies or renewals in late 2005 without providing the disclosures required under the Program. US Treasury expects such insurers to provide the required disclosures within 30 days of the publication of the Interim Final Rule. If disclosures are not provided within that time frame, the insurers will be required to justify the delay when making a claim for federal compensation. Although use of NAIC Model Disclosure forms is not required, insurers that use the recently updated NAIC forms will be deemed in compliance with Program requirements.

Determination of Affiliations

The Interim Final Rule provides that, for purposes of calculating insurer deductibles for insurer groups, a group's affiliates will be determined based on the circumstances existing on the date of the occurrence of the first Program Trigger event in a program year.¹

Federal Cause of Action and Approval of Settlements

The Interim Final Rule incorporates TRIEA's requirement that existing procedures and requirements established by US Treasury apply to Federal causes of action established under the Act. US Treasury has also clarified that it does not expect insurers to seek advance US Treasury approval for proposed settlements that would not be eligible for payment under the Program (e.g., losses from a post- 31 March, 2006 act that is not a Program Trigger). US Treasury cautions insurers to submit proposed settlements for approval if they are uncertain whether or not a certified act will become a Program Trigger event.

Interim Guidance Safe Harbour

The Interim Final Rule also incorporates a safe harbour for reasonable reliance on the Interim Guidance.

¹ For acts of terrorism occurring on or before March 31, 2006, group affiliates for TRIA purposes would have been determined based on the first certified act of terrorism occurring in a program year, since the Program Trigger did not take effect until after that date.