

## § 50.75

for which direct written premium is reported on commercial lines of business on the NAIC's Exhibit of Premiums and Losses of the NAIC Annual Statement (commonly known as Statutory Page 14) as provided in § 50.5(u)(1), or equivalently reported.

(c) For policies subject to the Federal Terrorism Policy Surcharge, the Surcharge shall be imposed and collected on a written premium basis for policies that incept or renew during the assessment period. All new, renewal, mid-term, and audit premiums for a policy term are subject to the Surcharge in effect on the policy term effective date. Notwithstanding this paragraph, if the premium for a policy term that would otherwise be subject to the Surcharge is revised after the end of the reporting period described in § 50.75(e), then any additional premium attributable to such revision is not subject to the Surcharge. For purposes of this subpart:

(1) Written premium basis means the premium amount charged a policyholder by an insurer for property and casualty insurance as defined in § 50.5(u), including all premiums, policy expense constants and fees defined as premium pursuant to the Statements of Statutory Accounting Principles established by the National Association of Insurance Commissioners, as adopted by the state for which the premium will be reported.

(2) In the case of a policy providing multiple insurance coverages, if an insurer cannot identify the premium amount charged a policyholder specifically for property and casualty insurance under the policy, then:

(i) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is *de minimis* to the total premium for the policy, the insurer may impose and collect from the policyholder a Surcharge amount based on the total premium for the policy, but

(ii) If the insurer estimates that the portion of the premium amount charged for coverage other than property and casualty insurance is not *de minimis*, the insurer shall impose and collect from the policyholder a Surcharge amount based on a reasonable estimate of the premium amount for

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the property and casualty insurance coverage under the policy.

(3) The Federal Terrorism Policy Surcharge is not considered premium.

(d) A policyholder must pay the applicable Federal Terrorism Policy Surcharge when due. The insurer shall have such rights and remedies to enforce the collection of the Surcharge that are the equivalent to those that exist under applicable state or other law for nonpayment of premium.

(e) When an insurer returns an unearned premium, or otherwise refunds premium to a policyholder, it shall also return any Federal Terrorism Policy Surcharge collected that is attributable to the refunded premium. Notwithstanding this paragraph, if the written premium for a policy is revised and refunded after the end of the reporting period described in § 50.75(e), then the insurer is not required to refund any Surcharge that is attributable to the refunded premium.

(f) Notwithstanding paragraphs (a), (b), and (c) of this section, if the expense of collecting the Federal Terrorism Policy Surcharge from all policyholders of an insurer during an assessment period exceeds the amount of the Surcharges anticipated to be collected, such insurer may satisfy its obligation to collect by omitting actual collection and instead remitting to Treasury the amount otherwise due.

(g) The Federal Terrorism Policy Surcharge is repayment of Federal financial assistance in an amount required by law. No fee or commission shall be charged on the Federal Terrorism Policy Surcharge.

### § 50.75 Remitting the surcharge.

(a) Each insurer shall provide a statement of direct written premium and Federal Terrorism Policy Surcharge to Treasury on a monthly basis, starting with the first month within the assessment period, through November of the calendar year and on an annual basis as of the last month of the calendar year. Reporting will be on a form prescribed by Treasury and will be due according to the following schedule:

(1) For each month beginning in the first month of the assessment period through November, the last business day of the calendar month following

the month for which premium is reported, and

(2) March 1 for the calendar year.

(b) The monthly statements provided to Treasury will include the following:

(1) Cumulative calendar year direct written premium adjusted for premium not subject to the Federal Terrorism Policy Surcharge, summarized by policy year.

(2) The aggregate Federal Terrorism Policy Surcharge amount calculated by applying the established Surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) Insurer certification of the submission.

(c) The annual statements to be provided to Treasury will include the following:

(1) Direct written premium as defined in §50.5(g), adjusted for premium not subject to the Federal Terrorism Policy Surcharge, summarized by policy year and by commercial line of insurance as specified in §50.5(u).

(2) The aggregate Federal Terrorism Policy Surcharge amount calculated by applying the established Surcharge percentage to the insurer's adjusted direct written premium by policy year.

(3) In the case of an insurer that has chosen not to collect the Federal Terrorism Policy Surcharge from its policyholders as provided in §50.74(f), a certification that the expense of collecting the Surcharge during the assessment period would have exceeded the amount of the Surcharges collected over the assessment period.

(4) Insurer certification of the submission.

(d) The calculated aggregate Federal Terrorism Policy Surcharge amount, as described in paragraphs (b)(2) and (c)(2) of this section, shall be remitted to Treasury upon submission of each monthly and annual statement. Through its submitted statements, an insurer obtains credit for a refund of any Federal Terrorism Policy Surcharge previously remitted to Treasury that was subsequently returned by the insurer to a policyholder as attributable to refunded premium under §50.74(e). A negative calculated amount in a monthly or annual statement indicates payment from Treasury is due to the insurer.

(e) Reporting shall continue for the one-year period following the end of the assessment period established by Treasury, unless otherwise permitted by Treasury.

#### § 50.76 Insurer responsibility.

For purposes of the collection, reporting and remittance of Federal Terrorism Policy Surcharges to Treasury, an "insurer," as defined in §50.5(1), shall not include any affiliate of the insurer.

### Subpart I—Federal Cause of Action; Approval of Settlements

SOURCE: 69 FR 44941, July 28, 2004, unless otherwise noted.

#### § 50.80 Federal cause of action and remedy.

(a) *General.* If the Secretary certifies an act as an act of terrorism pursuant to section 102 of the Act, there shall exist a Federal cause of action for property damage, personal injury, or death arising out of or resulting from such act of terrorism, pursuant to section 107 of the Act, which shall be the exclusive cause of action and remedy for claims for property damage, personal injury, or death arising out of or relating to such act of terrorism, except as provided in paragraph (c) of this section.

(b) *Effective period.* The exclusive Federal cause of action and remedy described in paragraph (a) of this section shall exist only for causes of action for property damage, personal injury, or death that arise out of or result from acts of terrorism that occur or occurred during the effective period of the Program.

(c) *Rights not affected.* Nothing in section 107 of the Act or this Subpart shall in any way:

(1) Limit the liability of any government, organization, or person who knowingly participates in, conspires to commit, aids and abets, or commits any act of terrorism;

(2) Affect any party's contractual right to arbitrate a dispute; or

(3) Affect any provision of the Air Transportation Safety and System Stabilization Act (Pub. L. 107-42; 49 U.S.C. 40101 note).