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BULLETIN 19-10

Date: November 15, 2019

To All Member Companies and Their Authorized
Mississippi Agents
To Whom it May Concern:

FC-2019-OMJFR (MSSR-132142739)
FC-2019-OMJRU (MSSR -132142857)
Flood Cannabis Exclusion Endorsements
and Rules

The Mississippi State Rating Bureau received Mississippi Department of Insurance approval for the above Commercial Flood Optional Cannabis Exclusion endorsements and rules. This change was filed on behalf of all member companies with a new and renewal effective date of 4-1-2020.

See the attached Explanatory Information for additional detail.

MSRB members have the option of accepting this change filed on their behalf with the 4-1-2020 effective date, individually filing for an alternative effective date, or individually filing to non-adopt or amend this change.

ISONet pages will be updated to reflect these changes. Copies of the filing package materials are available using the MSSR tracking numbers (NAIC SERFF System). The filing package can also be requested from MSRB personnel (Brad Little, Tony Parker, or Joe Shumaker) phone 601-981-2915.

Mississippi State Rating Bureau Management

Cannabis Exclusion Endorsements Introduced And Editorial Revision To Increased Cost Of Compliance Coverage Endorsement

About This Filing

We are introducing two new endorsements for the exclusion of coverage for Cannabis and we are revising a form within the Commercial Flood Section of the Commercial Lines Manual.

New Forms

We are introducing the following forms:

- ◆ FC 99 04 03 20 - Cannabis Exclusion
- ◆ FC 99 05 03 20 - Cannabis Exclusion With Hemp Exception

Revised Forms

We are revising the following form:

- ◆ FC 02 02 09 19 - Increased Cost Of Compliance Coverage

Related Filing

The following companion filing is being filed with a concurrent effective date:

- ◆ FC-2019-OMJRU (Rules)

Background

Marijuana

Marijuana is currently listed as a Schedule I drug under the federal Controlled Substances Act of 1970 (CSA), which defines Schedule I as drugs "with no currently accepted medical use and a high potential for abuse" and are considered "the most dangerous drugs of all the drug schedules with potentially severe psychological or physical dependence." In addition to marijuana, Schedule I includes other drugs including heroin, peyote, and LSD. Additionally, according to a Final Rule published by the Drug Enforcement Administration (DEA), any good or product that contains "any amount" of Tetrahydrocannabinol

(THC) is to be considered a Schedule I controlled substance, with the exception of "certain industrial products, processed plant materials, and feed mixtures to the extent such products, plant materials, and feed mixtures contain THC but are not used, or intended for use, for human consumption".

Industrial Hemp

This above mentioned Final Rule would generally encompass so called "hemp" food products and other "hemp" related products that, according to the DEA, "cause THC to enter the human body". *Id.* However, at least one Federal Court has placed a Stay on this Final Rule (See, *Hemp Ind. Assoc. et al. v. DEA*, Case No. 03-71366, 03-71603 (9th Cir. 2004)). Moreover, according to the National Conference of State Legislatures, "[a]t least 41 states have passed legislation related to industrial hemp, such as defining hemp and removing barriers, and at least 39 states have allowed for hemp cultivation and production programs".

Increased Cost Of Compliance Coverage

Increased Cost of Compliance endorsement FC 02 02 may be used to provide an additional limit of coverage for certain structures for the increased costs to comply with an applicable state or local floodplain management law or ordinance that meets the minimum standards under 44 C.F.R. § 60.3.

Explanation of Changes

We are introducing the following optional endorsements to add an exclusion to explicitly address cannabis, alternatively with limited exemptions, for use with the Commercial Flood Policy.

FC 99 04 – Cannabis Exclusion

- This optional endorsement:
 - ◇ Adds cannabis to property not covered.
 - ◇ Generally provides that Optional Coverage - Time Element Insurance, when provided by the policy, related coverage does not apply to that part of Business Income loss or Extra Expense incurred due to the suspension of the named insured's operations, which is attributable to the design, cultivation, manufacture, storage, processing, packaging, handling, testing, distribution, sale, serving, furnishing, possession or disposal of cannabis.
 - ◇ Defines cannabis and such defined term includes, among other things, any good or product that consists of or contains any amount of THC or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

◆ **FC 99 05 – Cannabis Exclusion With Hemp Exception**

This optional endorsement contains all the design attributes of endorsement FC 99 04 while also containing exceptions to the exclusions generally addressing goods or products containing or derived from hemp as follows:

- The property not covered provision related to cannabis does not apply to goods or products containing or derived from hemp, including, but not limited to:
 - ◇ Seeds;
 - ◇ Food;
 - ◇ Clothing;
 - ◇ Lotions, oils or extracts;
 - ◇ Building materials; or
 - ◇ Paper.
- Provides that the exception related to Optional Coverage - Time Element Insurance, also does not apply to Business Income loss or Extra Expense which is attributable to goods or products containing or derived from hemp, including, but not limited to:
 - ◇ Seeds;
 - ◇ Food;
 - ◇ Clothing;
 - ◇ Lotions, oils or extracts;
 - ◇ Building materials; or
 - ◇ Paper.

Both related exceptions do not apply to the extent any such goods or products are prohibited under an applicable state or local statute, regulation or ordinance in the state where such goods or products are located.

FC 02 02 – Increased Cost Of Compliance Coverage

We are taking this opportunity to revise FC 02 02 to more closely align with the corresponding coverage that is currently available under policies issued by the National Flood Insurance Program.

Impact

FC 99 04 – Cannabis Exclusion

To the extent that an exposure exists with respect to:

- ◆ Direct physical loss of or damage to cannabis, subject to individual insurer claim practices, the attachment of this endorsement represents a reinforcement of coverage intent.
- ◆ To the cannabis related activity addressed in this endorsement, the attachment of this endorsement may be considered a reduction in coverage with respect to that part of Business Income loss or Extra Expense incurred, due to a suspension of the insured's operations, which is attributable to such activity.

FC 99 05 – Cannabis Exclusion With Hemp Exception

To the extent that an exposure exists with respect to:

- ◆ Direct physical loss of or damage to cannabis, subject to individual insurer claim practices, the attachment of this endorsement represents a reinforcement of coverage intent.
- ◆ To the cannabis related activity addressed in this endorsement, the attachment of this endorsement may be considered a reduction in coverage with respect to that part of Business Income loss or Extra Expense incurred, due to a suspension of the insured's operations, which is attributable to such activity.

However, due to related exceptions in the endorsement, the attachment of this endorsement will not result in a reduction of coverage to:

- ◆ Direct physical loss of or damage to goods or products containing or derived from hemp, including but not limited to: (i) seeds, (ii) food, (iii) clothing, (iv) lotions, oils or extracts, (v) building materials, or (vi) paper, unless, and to the extent, any such goods or products are prohibited under an applicable state or local statute, regulation or ordinance in the state where such goods or products are located.
- ◆ Business Income loss or Extra Expense which is attributable to goods or products containing or derived from hemp, including but not limited to: (i) seeds, (ii) food, (iii) clothing, (iv) lotions, oils or extracts, (v) building materials, or (vi) paper, unless, and to the extent, any such goods or products are prohibited under an applicable state or local statute, regulation or ordinance in the state where such goods or products are located.

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Rule Revision To Accommodate New Cannabis Exclusion Endorsements And Editorial Revision To Increased Cost of Compliance Coverage Endorsement

About This Filing

We are revising a rule to instruct on the usage of new optional endorsements for the exclusion of coverage for Cannabis and to align with editorial revisions to an endorsement in the Commercial Flood Section of the Commercial Lines Manual.

Revised Rule

We are revising the following rule:

- ◆ Division Twenty - Commercial Flood
 - Rule 5. Property Insurance Endorsements

Related Filing

The following companion filing is being filed with a concurrent effective date:

- ◆ FC-2019-OMJFR (Forms)

Background

In forms filing FC-2019-OMJFR, we are introducing the following optional endorsements which expressly address the exclusion of coverage for cannabis.

- ◆ FC 99 04 03 20 – Cannabis Exclusion
- ◆ FC 99 05 03 20– Cannabis Exclusion With Hemp Exception

We are also revising the following form:

- ◆ FC 02 02 – Increased Cost Of Compliance Coverage

Explanation of Changes

We are introducing Paragraph F. Cannabis of Rule 5. Property Insurance Endorsements to reference and instruct on the usage of the new cannabis

exclusion endorsement options being introduced in companion forms filing FC-2019-OMJFR for use with the Commercial Flood Policy.

Editorial revisions to Rule 5. to align with editorial revisions to Increased Cost Of Compliance Coverage Endorsement, FC 02 02, include:

- ◆ Grammatical correction to paragraph 5.B.1.g. to add an apostrophe following the possessive and plural version of tenant;
- ◆ Additional language to paragraph 5.E.3. to add language that is identical with the editorial revision to paragraph A.1. of the Increased Cost Of Compliance Coverage Endorsement, FC 02 02, in companion filing FC-2019-OMJFR.

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