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BULLETIN 2008-01

TO: All Property and Casualty Insurers Writing Commercial Lines Insurance Products
All Insurers on the NAIC Quarterly Listing of Alien Insurers

FROM: Scott H. Richardson, CPCU 
Director

SUBJECT: Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007

DATE: February 20, 2008

I. Background

There has been much uncertainty in the markets for commercial lines property and casualty insurance coverage in light of the substantial losses experienced by the industry on September 11, 2001. Soon after the tragic events, many reinsurers announced that they did not intend to provide coverage for acts of terrorism in future reinsurance contracts. This led to a concerted effort on behalf of all interested parties to seek a temporary federal backstop to calm market fears over future terrorist attacks and the ability of the insurance industry to allocate capital to provide coverage for these unpredictable and potentially catastrophic events. As a result, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 (The Act). This federal law provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007. The Act has now been extended for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007.

Several provisions of the initial Act have changed in the 2007 extension. Those changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that the individual(s) are acting on behalf of any foreign person or foreign interest.
- Extending the program through December 31, 2014.
- Requiring clear and conspicuous notice to policyholders of the existence of the \$100,000,000 cap.
- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium, and the federal share of compensation at 85% of insured losses that exceed insurer deductibles.

- Fixing the program trigger at \$100,000,000 for all additional program years.
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed \$100,000,000,000.
- Requiring the Comptroller General to study the availability and affordability of insurance coverage for losses caused by terrorist attacks involving nuclear, biological, chemical, or radiological materials and issue a report not later than one year after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Requiring the Comptroller General to determine whether there are specific markets in the United States where there are unique capacity constraints on the amount of terrorism insurance available and issue a report not later than 180 days after the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007.
- Requiring the President's Working Group on Financial Markets to continue an ongoing study of the long-term availability and affordability of terrorism risk insurance.
- Accelerating the timing of the mandatory recoupment of the federal share through policyholders surcharges.

Other terms of the Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

The intent of this bulletin is to advise you of certain provisions of the Act, as extended, that may require insurers to submit a filing in this state of the disclosure notices, policy language and the applicable rates as a result of the Act.

II. Definition of Act of Terrorism

One of the changes made to TRIA with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a revision to the definition of an act of terrorism that eliminated the requirement that an individual or individuals that carry out an act of terrorism be acting on behalf of a foreign person or foreign interest. In short, this means that acts formerly referred to as "domestic" terrorism may now be certified as an act of terrorism under TRIA.

Section 102(1) defines an *act of terrorism* for purposes of the Act. Please note that the unmodified reference to "the Secretary" refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, "The term "act of terrorism" means any act that is certified by the Secretary, in concurrence with the Secretary of State, and the Attorney General of the United States—(i) to be an act of terrorism; (ii) to be a violent act or an act that is dangerous to—(I) human life; (II) property; or (III) infrastructure; (iii) to have resulted in damage within the United States, or outside the United States in the case of—(I) an air carrier or vessel described in paragraph (5)(B); or (II) the premises of a United States mission; and (iv) to have been committed by an individual or individuals, 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." Section 102(1)(B) states, "No act shall be certified by the Secretary as an act of terrorism if—(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000." Section 102(1)(C) and (D) specify

that the determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

The Terrorism Risk Insurance Act, as amended, contains in Section 103(1)(B) a program trigger of \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered.

This state will not allow exclusions of coverage for acts of terrorism that fail to be *certified losses* solely because they fall below the \$5,000,000 threshold in Section 102(1)(B) on any policy that provides coverage for acts of terrorism that fail to be *certified*. Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100 billion in the aggregate.

III. Submission of Rates, Policy Form Language and Disclosure Notices

If an insurer relies on an advisory organization to file loss costs and related rating systems on its behalf, no rate filing is required unless an insurer plans to use a different loss cost multiplier than is currently on file for coverage for *certified losses*. Insurers that develop and file rates independently may choose to maintain their currently filed rates or submit a new filing. The rate filing should provide sufficient information for the reviewer to determine what price would be charged to a business seeking to cover *certified losses*. This state will accept filings that contain a specified percentage of premium to provide for coverage for *certified losses*. Insurers may also choose to use rating plans that take into account other factors such as geography, building profile, proximity to target risks and other reasonable rating factors. The insurer should state in the filing the basis that it has for selection of the rates and rating systems that it chooses to apply. The supporting documentation should be sufficient for the reviewer to determine if the rates are excessive, inadequate or unfairly discriminatory.

Insurers subject to policy form regulation must submit the policy language that they intend to use in this state. The policy should define *acts of terrorism* in ways that are consistent with the Act, as amended, state law and the guidance provided in this bulletin. The definitions, terms and conditions should be complete and accurately describe the coverage that will be provided in the policy. Insurers may conclude that current filings are in compliance with the Act, as amended, state law and the requirements of this bulletin. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is required.

Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers must now also provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2), at the time of offer, purchase and renewal of the policy.

The Director requests that the disclosure notices be filed, along with the policy forms, rates and rating systems as they are an integral part of the process for notification of policyholders

in this state and should be clear and not misleading to business owners in this state. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, this state will permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the Director per the authority granted the Director to exempt forms from prior approval pursuant to S.C. Code 38-61-20 (C).

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of this state. Completion of the Expedited Filing Transmittal will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany filings.

We encourage filers to take advantage of the SERFF system for submitting such filings, and will permit any other state requirements (e.g., filing forms, supplemental exhibits, etc.) to be similarly bypassed.

This voluntary expedited filing system shall remain in place until April 1, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to April 1, 2008) then it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

IV. Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act. The expedited filing procedures discussed in this bulletin shall expire on April 1, 2008.

If you have any questions on the information covered in this bulletin please contact Carla Griffin at 803-737-6781.

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, that you have a right to purchase insurance coverage for losses resulting from acts of terrorism, *as defined in Section 102(1) of the Act*: The term “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—to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States mission; and to have been committed by an individual or individuals 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.

YOU SHOULD KNOW THAT WHERE COVERAGE IS PROVIDED BY THIS POLICY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM, SUCH LOSSES MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT UNDER A FORMULA ESTABLISHED BY FEDERAL LAW. HOWEVER, YOUR POLICY MAY CONTAIN OTHER EXCLUSIONS WHICH MIGHT AFFECT YOUR COVERAGE, SUCH AS AN EXCLUSION FOR NUCLEAR EVENTS. UNDER THE FORMULA, THE UNITED STATES GOVERNMENT GENERALLY REIMBURSES 85% OF COVERED TERRORISM LOSSES EXCEEDING THE STATUTORILY ESTABLISHED DEDUCTIBLE PAID BY THE INSURANCE COMPANY PROVIDING THE COVERAGE. THE PREMIUM CHARGED FOR THIS COVERAGE IS PROVIDED BELOW AND DOES NOT INCLUDE ANY CHARGES FOR THE PORTION OF LOSS THAT MAY BE COVERED BY THE FEDERAL GOVERNMENT UNDER THE ACT.

YOU SHOULD ALSO KNOW THAT THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS’ LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, YOUR COVERAGE MAY BE REDUCED.

Acceptance or Rejection of Terrorism Insurance Coverage

	I hereby elect to purchase terrorism coverage for a prospective premium of \$ _____.
	I hereby decline to purchase terrorism coverage for certified acts of terrorism. I understand that I will have no coverage for losses resulting from certified acts of terrorism.

Policyholder/Applicant’s Signature

Insurance Company

Print Name

Policy Number

Date

**EXPEDITED FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING**

This page applies to the following state(s)

Indicate Type of Filing
<input type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input type="checkbox"/> Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail

Filing information

Line of Insurance (see attachment)	
Company Program Title (Marketing title) (if applicable)	
Filing Type ** see note below	
This application is used with:	
Effective Date Requested	
Filing date	
Company Tracking Number	
Date filing approved in domiciliary state, if applicable	

	<u>Component/Form Name</u> <u>/Description/Synopsis</u>	<u>Form # or Rate Page</u> <u>Include edition date</u>	<u>Replacement</u> <u>Or withdrawn?</u>	<u>If replacement,</u> <u>give form # or rate</u> <u>page(s) it replaces</u>	<u>Previous State</u> <u>Filing Number,</u> <u>if required</u> <u>by state</u>
01			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document for each insurer or advisory organization.
- One copy of each endorsement, disclosure form or other policy language, unless the insurer has given an advisory organization authorization to file them on its behalf.
- A copy of the rates, rating systems and supporting documentation.
- The appropriate filing fees, if required
- A postage-paid, self-addressed envelope **large enough to accommodate the return.**

The insurer(s) submitting this filing certifies that it:

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and the laws of this state; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature _____

Print Name: _____

Title: _____

COMPLETED SAMPLE FORM

Ed. 12/19/07

EXPEDITED FILING TRANSMITTAL DOCUMENT
FOR TERRORISM RISK INSURANCE FORMS AND PRICING

This page applies to the following state(s)

Indicate Type of Filing
<input checked="" type="checkbox"/> Filing Related to <i>Certified Losses</i>
<input checked="" type="checkbox"/> Filing Related to <i>Non-Certified Losses</i>
<input checked="" type="checkbox"/> Filing Applicable to Both Certified and Non-Certified Losses

Department Use only

Company Name(s)	Domicile	NAIC #	FEIN #
ABC Insurance Company	NY	0000-99999	99-1234567

Contact Info for Filer

Name and address of Filer(s)	Telephone #	FAX #	e-mail
John Doe (Form Filing) Regulatory Compliance ABC Insurance Co. 12345 Fifth Ave New York, NY 10234	501-555-5555	501-555-5551	John.doe@abcins.com

Filing information

Line of Insurance (see attachment)	Commercial General Liability
Company Program Title (Marketing title) (if applicable)	General Liability Program
Filing Type ** see note below	Form (Endorsement)
This application is used with:	(Insert policy form number to which the application attaches)
Effective Date Requested	01-01-07 (Enter your desired effective date)
Filing date	(Date Company sends filing)
Company Tracking Number	ABC-EP-2001-01 (Enter your filing tracking number, if applicable)
Date filing approved in domiciliary state, if applicable	Not approved yet. Filed on same date as this filing.

	<u>Component/Form Name /Description/Synopsis</u>	<u>Form # or Rate Page Include edition date</u>	<u>Replacement Or withdrawn?</u>	<u>If replacement, give form # or rate page(s) it replaces</u>	<u>Previous State Filing Number, if required by state</u>
01	Certified Loss Coverage Form	CG XX XX 12 02	<input checked="" type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither	List form number of previous terrorism exclusion	
02			<input type="checkbox"/> Replacement <input type="checkbox"/> Withdrawn <input type="checkbox"/> Neither		

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- Is compliance with the terms of the Terrorism Risk Insurance Act, as amended, and the laws of this state;
- Is compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Signature

Print Name:

Title: