



Illinois Department of Financial and Professional Regulation

Division of Insurance

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TO: All Illinois Licensed Property and Casualty Insurance Companies

FROM: Michael McRaith, Director of Insurance

RE: CB 2008-01 – Terrorism Risk Insurance Program Reauthorization Act of 2007 and Filing Procedures and Requirements for Terrorism-Related Forms, Rules and Rates

REPLY TO: For forms filing questions, please email:
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The intent of this bulletin is to advise property and casualty insurers of certain provisions of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007, and current requirements regarding terrorism coverage and property and casualty form and rate/rule filings in Illinois.

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 (the 2007 extension).

Several provisions of the 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 \$100,000,000,000 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 extension.
- 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 extension.
- 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 policyholder surcharges.

Other terms of the Act, as amended by the 2007 extension, remain unchanged.

The bulletin is divided into the following sections:

- I. Important provisions in the Act and the 2007 extension**
- II. Standard fire policy language exception**
- III. Requirements regarding the \$5,000,000 threshold and \$100,000,000,000 cap**
- IV. Exclusions or limitations for lines of business not defined as "property and casualty insurance" under the Act**
- V. Requirements for expedited filing review**
- VI. Information about commercial forms and rates/rating system and rating rules required to be filed in Illinois**
- VII. Additional reminders for all companies**
- VIII. Withdrawal of Company Bulletin 2003-02**
- IX. Effective date**

I. Important Provisions in the Act and the 2007 Extension

Definition of insurers that must participate in the Terrorism Insurance Program (the Program)

Section 102(6) of the Act defines “*insurer*” as “any entity, including any affiliate thereof (A) that is (i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto; (iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity; (iv) a State residual market insurance entity or State workers’ compensation fund; or (v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f); (B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and (C) that meets any other criteria that the Secretary may reasonably prescribe.

Definition of “*Property and Casualty Insurance*”

Section 102(12) of the Act defines “*property and casualty insurance*” as: (A) commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and directors and officers liability insurance; and (B) does not include (i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance, including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq); (vii) reinsurance or retrocessional reinsurance, (viii) commercial automobile insurance, (ix) burglary and theft insurance, (x) surety insurance, (xi) professional liability insurance; or (xii) farm owners multiple peril insurance.

Definition of “*Act of Terrorism*”

One of the changes made to the Act with the enactment of the extension 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 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.

Mandatory availability of terrorism coverage

All insurers, as defined in the Act in Section 102(6), are required by the Act to participate in the Terrorism Insurance Program (the Program) and make available coverage for insured losses in all of their covered commercial lines policies. Such coverage shall not differ materially from the terms, amounts or other coverage limitations applicable to losses arising from events other than acts of terrorism.

Disclosure notice requirements

A change introduced in the extension is a new disclosure requirement for any policy issued after the enactment of the extension. Specifically, in addition to other disclosure requirements previously required by the Act, 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.

II. Standard Fire Policy Language Exception

Any terrorism exclusion or limitation language must include an exception for fire following a terrorism loss. This provision does not apply to exclusions or limitations for terrorism losses that exceed the Act’s \$100,000,000,000 cap. To ensure that the form language is clear and unambiguous to the policyholder, the standard fire policy exception language must be included on the terrorism coverage exclusion or limitation form. Insureds may not waive this statutorily mandated coverage.

III. Requirements Regarding the \$5,000,000 Threshold and \$100,000,000 Cap

The Illinois Division of Insurance (DOI) 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) of the Act on any policy that provides coverage for acts of terrorism that fail to be *certified*.

Insurers may exclude or limit coverage for *certified* losses that exceed \$100 billion in the aggregate.

IV. Exclusions or Limitations for Lines of Business not Defined as “Property and Casualty Insurance” under the Act

Consistent with the DOI past position and practices, terrorism exclusions or limitations on personal lines policies and coverages will be prohibited.

Consistent with DOI past position and practices, some limitations in coverage for acts of terrorism for certain commercial lines of business not defined as “property and casualty insurance” as defined in the Act will be allowed, subject to the following provisions:

For policies providing property insurance coverage the following limitations apply:

- Exclusions for acts of terrorism apply only if the act(s) of terrorism result(s) in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72-hour period;
- Exclusions for acts of terrorism are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage, the following limitations apply:

- Exclusion for acts of terrorism apply only if the act(s) of terrorism result(s) in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72-hour period; or
- Fifty or more persons sustain death or serious physical injury for related incidents that occur within a 72-hour period. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.

- Exclusions for acts of terrorism are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Any previously filed-and-accepted terrorism exclusions or limitations for lines of business not defined as “property and casualty insurance” under the Act are still valid in Illinois to the extent that they do not conflict with the Act or the 2007 extension.

V. Requirements for Expedited Filing Review

Illinois will voluntarily expedite all terrorism-related form and rate filings until April 1, 2008, giving first preference to form filings that must comply with the 2007 extension changes to the Act.

Illinois law is very specific regarding which insurers must file forms, rates/rating systems/rating rules with the DOI and for which lines of business such forms/rates/rules must be filed. To assist the DOI in expediting review of your required forms/rates/rating systems/rating rules, please do not file non-required forms/rates/rating systems/rating rules unless specifically asked to do so. If you are unsure which insurers, or which commercial forms/rates must be filed, please read Section VI below.

Insurers or advisory organizations may receive expedited review of their form or rate/rating system/rule filings by following one of the three (3) procedures listed below:

- 1) Submit an electronic filing via SERFF following all general and filing instructions.
- 2) Submit a paper filing with the following requirements:
 - Highlight all changes from currently-filed forms;
 - Include a properly-completed NAIC Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing; and
 - Include duplicate copies of the filing if a stamped return copy is desired, along with a self-addressed stamped envelope large enough, and including enough postage, to return the copy.
- 3) Submit a paper filing with the following requirements:
 - Highlight all changes from currently-filed forms;
 - Include duplicate copies of the filing if a stamped return copy is desired, along with a self-addressed stamped envelope large enough, and including enough postage, to return the copy.
 - Include a cover letter, in duplicate, that includes the following information:
 - Company name;
 - Company FEIN;
 - Filing number (15 characters or less);

- Descriptive title of form;
- Clear indication that the filing is a terrorism-related filing;
- Form # and edition date of form;
- Listing of all policies for which an endorsement is being used;
- Effective date(s) of use;
- Numbers of forms being filed;
- Notification of whether the filing is new or supersedes a present filing and identification of all superseded filings.

Filing of the Act’s disclosure notice forms on informational basis

The DOI requires that insurers file the Act’s disclosure notices for informational purposes 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 and should be consistent with the insurer’s policy language, rates, rating systems, and rating rules.

Insurers that adopt the NAIC model disclosure notifications without change are not required to file such notifications, as long as they advise the DOI of the adoption with no change.

VI. Information about Commercial Forms and Rates/Rating System/Rating Rules Required to be Filed in Illinois

Commercial forms required to be filed

The Act does not change state laws regarding which insurers must file forms with the Director.

Illinois law [215 ILCS 5/143] requires all companies writing lines of insurance found in Class 2 (except accident and health), and Class 3 of Section 4 of the Illinois Insurance Code to file policy forms, endorsements, etc., except for the following: forms issued by surplus lines companies, risk retention groups, syndicates, licensed captives, or farm mutuals, surety contracts or fidelity bonds, forms issued to “industrial insureds” as defined in Section 121-2.08 (except for Workers’ Compensation policies), and manuscript forms issued to individual risks.

Section 143(2) of the Illinois Insurance Code (215 ILCS 5/143(2)) permits the Director of Insurance to disapprove any policy form, rider, certificate, application blank or other material if it: (i) violates any provision of the Illinois Insurance Code; (ii) contains inconsistent, ambiguous, or misleading clauses, or (iii) contains exceptions and conditions that will unreasonably or deceptively affect the risks that are purported to be assumed by the policy. If the Director disapproves a policy or form under Section 143(2), the Director may order the insurer to discontinue its use.

Commercial rates/rating systems/rating rules required to be filed in Illinois

a) Insurers that must file rates/rating systems/rating rules

The Act does not change state laws or regulations regarding which insurers must file commercial lines rates/rating systems/rating rules in Illinois. Only licensed insurers must file rates/rating systems/rating rules in Illinois. Section 445(12) of the Illinois Insurance Code exempts surplus lines insurers from filing rates/rating systems/rating rules. In addition, risk retention groups, syndicates, farm mutuals, and licensed captives are not required to file rates/rating systems/rating rules.

b) Form RF-3 rating information required to be filed

A Form RF-3 must be filed for any rate level change affecting any of the kinds of business enumerated in Class 2 and Class 3 of Section 4 of Illinois Insurance Code. Form RF-3s are required of all insurers except for the following exceptions: surplus lines, farm mutuals, reinsurance, ocean marine, aircraft, title insurance, accident and health, risk retention groups, self-insured captives, inland marine risks which by general custom are not written according to manual rates or rating plans; and individually rated risks.

NOTE: If a rate change includes an increase or decrease in rate level due to terrorism, please state so in the Form RF-3 section titled “Brief description of filing.”

c) Rates/rating systems/rating rules required to be filed

The Act does not change state laws regarding which commercial lines rates and rules must be filed with the Director.

Administrative Rules 754, 929, 2302, and 2902 (Title 50, IL Adm Code), require only the following commercial lines rates/rating systems and rating rules to be filed in Illinois:

- taxicab,
- liquor liability,
- medical malpractice (not subject to the Act),
- workers’ compensation, and
- group inland marine.

NOTE: All other commercial lines rates/rating systems and rating rules are not required to be filed with the DOI.

VII. Additional Reminders for All Companies

Insurers must comply with all laws regarding cancellation of commercial insurance policies, including but not limited to the following provisions: Sections 143.14, 143.16, 143.16a, and 143.23 of the Illinois Insurance Code.

Insurers must comply with all laws regarding renewal and nonrenewal of commercial insurance policies, including but not limited to the following: Sections 143.17 and 143.17a of the Illinois Insurance Code pertaining to nonrenewal of commercial insurance policies, and renewal of commercial insurance policies with material change in coverages, deductibles or increase in premium.

VIII. Withdrawal of Company Bulletin 2003-02

The DOI has included in this bulletin any provisions that remain in effect from previously issued Company Bulletin 2003-02. Company Bulletin 2003-02 is hereby withdrawn and is no longer effective.

IX. Effective Date

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