



Division of Insurance

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BULLETIN B 02-20

**TO: ALL SURPLUS LINES AND PROPERTY AND CASUALTY INSURERS
WRITING COMMERCIAL LINES INSURANCE PRODUCTS IN THE STATE
OF ALASKA, AND OTHER INTERESTED PARTIES**

RE: THE TERRORISM RISK INSURANCE ACT OF 2002

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 because of the events that occurred 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. The United States Congress recently enacted and the President has signed into law 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.

This bulletin is to advise you of certain provisions of the Act that may require insurers to submit a filing in this state and to inform you regarding a voluntary procedure for insurers to use for filing the disclosure notices, policy language, and the applicable rates that are discussed in the Act. The discussion of the Act in this bulletin is not intended to be an exhaustive analysis. For brevity sake, the provisions of the Act referenced below are in most cases summarized or paraphrased. Please review the Act in its entirety to assure your compliance with it.

Section 102(6) of the Act defines "insurers" for purposes of the Act. "Insurer" means any entity and affiliate thereof--(A) that is--(i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) 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; (B) that receives direct earned premium for any type of commercial property and casualty insurance coverage. The Secretary of Treasury may extend the Act to other classes or types of captive insurers and other self-insured arrangements by municipalities and other entities as well as to group life insurance.

Section 102(12) of the Act states the term “property and casualty insurance” (A) means commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and surety insurance, and (B) does not include crop or livestock insurance, private mortgage or title insurance, financial guaranty insurance issued by monoline financial guaranty insurance corporations, medical malpractice, health or life insurance including group life, flood insurance provided under the National Flood Insurance Act, or reinsurance or retrocessional reinsurance.

All insurers, as defined in the Act, 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. The term “*insured loss*” means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(i) occurs within the United States; or (ii) occurs in an air carrier (as described in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of a United States mission. The Act also advises that insured loss excludes amounts awarded in a civil action that are attributable to punitive damages. The Act further requires insurers to make available property and casualty insurance coverage for *insured losses* that do not differ materially from the terms, amounts, and other coverage limitations applicable to losses arising from events other than acts of terrorism.

The Act voids any terrorism exclusions in a contract for property and casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be *insured losses*. The Act also voids any state approval of any terrorism exclusion from a contract for property or casualty insurance that is in force on the date of enactment of this Act to the extent that it excludes losses that would otherwise be *insured losses*. The Act allows insurers to “reinstate a preexisting provision in a contract for commercial property and casualty insurance that is in force on the date of enactment of this Act and that excludes coverage for acts of terrorism only” if one of two conditions are met. The insurer must have received a written statement from the insured that affirmatively authorizes such reinstatement or if the insurer has provided notice to the insured, at least 30 days before any such reinstatement and the insured fails to pay any increased premium charged by the insurer for providing such terrorism coverage.

Definition of Insured Loss

Section 102(5) of the Act provides a definition of *insured loss*. It states, “the term ‘insured loss’ means any loss resulting from an act of terrorism (including an act of war, in the case of workers’ compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if such loss—(A) occurs within the United States; or (B) occurs to an air carrier (as defined in section 40102 of title 49, United States Code), to a United States flag vessel (or a vessel based principally in the United States, on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), regardless of where the loss occurs, or at the premises of any United States mission.”

As a result of the definition contained in the Act, there are essentially two distinct types of losses that a business might face that result from terrorism. One type of loss is the *insured loss* that is defined within and covered by the provisions of the Act. For convenience, we will adopt the moniker of “certified loss” to refer to losses resulting from certified acts of terrorism. The second type of loss that a business might face is one that does not fit within the definition of *insured loss* as described in the Act. For convenience, we will adopt the moniker of “non-certified loss” to refer to losses resulting from terrorism that is not certified. The most significant difference between these losses is that the *certified losses* will always involve a foreign person or foreign interest, while the *non-certified losses* may not.

Please note that the preemption of this state's filing law, Alaska Statute (AS) 21.42.120, applies only to contract language that is applicable to certified losses. If an insurer intends to reinstate an exclusion on in-force policies as allowed under the Act, it may only reinstate an exclusion that previously existed on the policy.

Alaska has allowed some significant limitations that provide coverage for acts of terrorism under certain circumstances. For policies providing property insurance coverage the following limitations applied to *non-certified losses*:

- Exclusions for acts of terrorism only apply if the acts of terrorism result 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 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 applied to *non-certified losses*:

- Exclusions for acts of terrorism only apply if the acts of terrorism result 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 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.

By Order R 02-08, the Director of the Alaska Division of Insurance is withdrawing approval of existing terrorism exclusions containing these limitations. Therefore, an insurer may not apply these exclusions for non-certified losses to new and renewal business. Exclusions for non-certified losses will be re-evaluated. Exclusions for non-certified losses must be filed with and approved by the division before they may be used.

Definition of Act of Terrorism

Section 102(1) defines an *act of terrorism* for purposes of the Act. Section 102(1)(A) states, "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—(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 acting on behalf of any foreign person or foreign interest, 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.

Alaska 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 *certified losses*. Insurers required to file policy forms may submit language containing coverage limitations for *certified losses* that exceed \$100 billion.

The Act includes a definition of acts of terrorism that is used within this bulletin to mean *certified losses*. Because exclusions for non-certified losses will be re-evaluated, policies subject to policy form filing requirements should also define what constitutes an act of terrorism for *non-certified losses*. If exclusions for *non-certified losses* are approved, Alaska would accept the following definition, or one that is more liberal to policyholders:

The phrase “non-certified act of terrorism” means a violent act or an act that is dangerous to human life, property; or infrastructure that is committed by an individual or individuals and that appears to be part of an effort to coerce a civilian population or to influence the policy or affect the conduct of any government by coercion, and the act is not certified as a terrorist act pursuant to the Federal Terrorism Risk Insurance Act of 2002.

Submission of Rates, Policy Form Language, and Disclosure Notices

Section 106(a)(2)(B) of the Act states that “during the period beginning on the date of enactment of this Act and ending on December 31, 2003, rates and forms for terrorism risk insurance coverage covered by this title and filed with any State shall not be subject to prior approval or a waiting period under any law of a State that would otherwise be applicable” The subsection further notes that rates remain subject to subsequent regulatory review based on whether a rate is “excessive, inadequate, or unfairly discriminatory” and other applicable state law. Similarly, policy forms are subject to subsequent review based on all applicable laws and regulations. Thus, a system is created where insurers can immediately implement prospective rate changes for coverage of *insured losses* related to *acts of terrorism* as defined in the Act. Policy language for terrorism risk and insurance covered by the Act is only exempt from prior approval or waiting periods to the extent that the policy language relates to *insured losses* as defined in the Act. Other policy language changes and related pricing remain subject to current applicable state law.

Insurers are required to comply with the Act and with state law. Alaska law will still require insurers subject to rate regulation under AS 21.39 to file rates. As authorized under AS 21.39.040(f), Order R 02-09 suspends the filing requirements until January 1, 2003. Beginning January 1, 2003, rates must not be used before they are filed. Rate filings will be considered filed as of the date the filing is received by the division.

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 for coverage for *certified losses* than is currently on file. 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*. The insurer should state in the filing the basis that it has for the 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 under AS 21.42 will still be required to file the policy language that they intend to use. As authorized under AS 21.42.120(d), Order R 02-09 suspends the form filing requirements until January 1, 2003. Beginning January 1, 2003, forms must not be used before they are filed. Form filings will be considered filed as of the date the filing is received by the division.

The policy should define *acts of terrorism* and both *certified* and *non-certified losses* in ways that are consistent with the Act, Alaska 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.

In-force business receives special consideration under the Act. Section 105(a) voids any terrorism exclusion on existing policies to the extent that it excludes losses that would otherwise be *insured losses* as defined in the Act. It details a process for insurers and policyholders to reinstate the voided exclusions. Under that process, an insurer may reinstate a preexisting provision in a contract that is in force on the date of enactment of this Act and that excludes coverage for an act of terrorism only if the insurer has received a written statement from the insured that affirmatively authorizes such reinstatement or if the insured fails to pay any increased premium charged by the insurer for providing such coverage and the insurer provided notice at least 30 days before any such reinstatement, as provided in Section 105 of the Act.

There are also disclosures required for new business and renewal business. Although the voiding of contract language is not an issue, insurers must make certain disclosures to policyholders to remain in compliance with the Act. Section 103(b)(2) requires insurers to provide a clear and conspicuous disclosure to the policyholder of the premium charged for covered *insured losses* and advise that a federal program exists where the federal government will share significant portions of major *insured losses* with insurers.

Sample policyholder notices are attached to this bulletin. Insurers may use these policyholder disclosure notices without filing them with the Alaska Division of Insurance. Insurers electing to use their own policyholder disclosure notices should file the notices along with their policy forms, as the notices are an integral part of the process for notification of policyholders in Alaska. The notices should be clear and not misleading to business owners in Alaska.

As allowed under AS 21.33.037(b)(1), a surplus lines insurer is authorized to send the disclosure notices required by the Act directly to their policyholders. This suspension of otherwise applicable statutes prohibiting a surplus lines insurer from transacting insurance in this state as defined in AS 21.90.900(41)(D) is effective only through February 23, 2003. During this time, a surplus lines insurer may send the disclosure notice directly to its in-force business and to new and renewal business. After February 23, 2003, the surplus lines insurer must provide the disclosure notices to its policyholders through the surplus lines producer.

Effect on Workers' Compensation Insurance Coverage

Treatment of workers' compensation is slightly different than for other property and casualty insurance coverages. First, Section 102(1)(B)(i) provides that the federal program will share the risk of loss for workers' compensation for acts of war in addition to acts of terrorism. This treatment occurs because of the statutory nature of the workers' compensation program, which does not provide an exclusion for losses resulting from an act of war. Under Alaska law there is no exclusion for workers' compensation losses resulting from an act of war. There is no provision in the Act that would preempt the compulsory coverage aspects of workers' compensation insurance policies. In other respects, however, workers' compensation coverage is treated under the Act as any other covered line of insurance. Therefore, the notice requirements of Section 103(b)(2) and the mandatory "make available" requirements of Section 103(c) apply to workers' compensation policies. In this connection, workers' compensation insurers are required to separately state the estimated portion of the premium being charged a policyholder

for acts of terrorism, as defined in the Act. As Alaska’s workers’ compensation law does not have any exclusions for terrorism or war, neither insurers nor policyholders may use the Act’s procedures to create such an exclusion. With regard to the filing and approval of rates and forms, workers’ compensation insurers are also covered by the Act, specifically Section 106(a)(2)(B) that waives any state prior approval or time requirements for the first year of the Act. Such insurers shall, therefore, follow the alternative filing procedures described in this bulletin.

Information for SERFF Filers

For insurers that use the SERFF system, there will be an expedited filing form in that system for your use.

Explanation and Instructions for Terrorism Rate and Form Review

The Act preempts any state prior approval law pertaining to rates or forms—including any law that imposes waiting periods—prior to use of a rate or form for purposes of terrorism coverage, as defined by the Act. This preemption remains in effect for the first year of the Act. Consistent with these requirements of the Act and Alaska law, rates and forms for certified losses must still be filed. Insurers may not use a rate or a form before it is filed. Insurers and rating organizations must follow the filing procedures as described in the “Submission of Rates, Policy Form Language, and Disclosure Notices” section of this bulletin.

To the extent possible and depending on available division resources, terrorism filings may be given expedited review. To be eligible for an expedited review, the procedure set forth below must be followed. However, nothing in this bulletin shall be construed as establishing a rate or form filing review or approval requirement where one does not otherwise exist under Alaska law. Policy language changes and related pricing for *non-certified losses* remain subject to current applicable state law.

Forms with Instructions

Attached to this bulletin is a uniform filing transmittal form that has been agreed upon by Alaska and other states. An insurer or rating organization wishing to be eligible for expedited treatment of its filing shall complete the EXPEDITED FILING TRANSMITTAL DOCUMENT—FOR TERRORISM RISK INSURANCE FORMS AND PRICING as directed. In addition, the insurer or rating organization submitting the filing must certify that the filing is consistent with this bulletin, Alaska law, and the provisions of the Act. Certification is made by signing the appropriate blank on the transmittal form. Filings for policy language changes and related pricing for *non-certified losses*, which remain subject to current applicable Alaska law, may be made using the attached filing transmittal form. The attached filing transmittal document replaces all otherwise applicable filing forms and filing transmittal forms for these filings.

Rates and forms must be filed separately. To be complete, a filing must include the appropriate items from the following:

1. A completed, certified Expedited Filing Transmittal Document for each insurer or rating organization.
2. For a form filing, one copy of each policy form or endorsement that the insurer intends to use, unless the insurer has given a rating organization authorization to file them on its behalf.
3. For a rate filing, a copy of the rates and rating systems along with the supporting documentation.
4. A copy of any disclosure notices developed by the insurer that will be used to convey information to policyholders in Alaska should be included in a form filing. An insurer electing to use the sample policyholder notices attached to this bulletin does not need to file those for review.

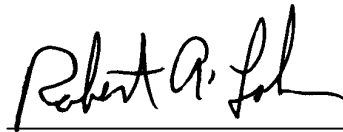
5. The appropriate filing fees, if required.
6. A postage-paid, self-addressed envelope **large enough to accommodate the return.**
Note that a comparable filing transmittal form is available in SERFF.

If this filing is for multiple companies, please provide one copy of the transmittal header listing all companies to which the filing applies and an extra copy for return to the company. Please add an additional sheet if more room is needed to list all companies.

Expiration Dates

The expedited filing process provided for in the Act and outlined in this bulletin expires on December 31, 2003. The remainder of the Act expires on December 31, 2005, unless it is extended by the United States Congress.

Dated: December 10, 2002.

A handwritten signature in black ink, reading "Robert A. Lohr", written over a horizontal line.

Robert A. Lohr
Director

**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/Description/Synopsis</u>	Form # or Rate Page Include edition date	Replacement or withdrawn?	If replacement, give form # or rate page(s) it replaces	Previous State Filing Number, if required by state
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		

Rates and forms must be filed separately. To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document listing each insurer or rating organization.
- For a form filing, one copy of each endorsement, disclosure form or other policy language, unless the insurer has given a rating organization authorization to file them on its behalf.
- For a rate filing, 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 sample disclosure notices contained in Bulletin B 02-20 will be used. Yes No

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of Alaska; and
- Is in compliance with the requirements of the Bulletin B 02-20 containing the voluntary expedited filing procedures.

Signature

Print Name

Title

COMPLETED SAMPLE FORM

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 #
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	01-01-02 (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 Exclusion	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		

Rates and forms must be filed separately. To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document listing each insurer or rating organization.
- For a form filing, one copy of each endorsement, disclosure form or other policy language, unless the insurer has given a rating organization authorization to file them on its behalf.
- For a rate filing, 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 sample disclosure notices contained in Bulletin B 02- 20 will be used. Yes No

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act of 2002 and the laws of Alaska; and
- Is in compliance with the requirements of the Bulletin B 02-20 containing the voluntary expedited filing procedures.

Signature

Print Name

Title