



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Insurance

Sarah Palin, Governor
Emil Notti, Commissioner
Linda S. Hall, Director

BULLETIN B 08-01

**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 PROGRAM REAUTHORIZATION ACT
OF 2007**

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 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 (Act). The Act provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended in 2005 for a two-year period covering Program Years 2006 and 2007, and some changes to the original Act were made at that time. 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 Act of 2007 (2007 extension).

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

- Revising the definition of a certified *act of terrorism* to eliminate the requirement that an individual is 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 percent of an insurer's direct earned premium and the federal share of compensation at 85 percent 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.

- 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 to issue a report not later than one year after the enactment of the 2007 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 2007 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 Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

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

Definition of Act of Terrorism

One of the changes made to the Act by the 2007 extension was a revision to the definition of an act of terrorism that eliminated the requirement that an individual who carries out an act of terrorism to be acting on behalf of a foreign person or foreign interest. This means that an act of terrorism formerly referred to as “domestic terrorism” may now be certified as an act of terrorism under the Act.

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.

Section 103(e)(1)(B)(ii) of the 2007 extension continues the requirement that there be \$100 million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement can be paid.

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

Submission of Rates, Policy Form Language, and Disclosure Notices

Insurers are required to comply with the Act and with state law. Alaska law requires insurers subject to rate regulation under AS 21.39 to file rates. Rates for terrorism risk insurance covered by the Act should be filed under the appropriate sections of AS 21.39, i.e. the file and use provisions of AS 21.39.220, the flex rating provisions of AS 21.39.210, or the prior approval provisions of AS 21.39.041.

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. Alaska 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, or 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. If an insurer files a premium charge of between zero and one percent that does not vary by application of other rating factors, the insurer does not need to file detailed supporting documentation.

If an insurer that is a member of, or subscriber to, a rating organization desires to deviate from the loss costs or rating plan filed by the rating organization, the requirements of AS 21.39.070 must be followed.

Insurers subject to policy form regulation must submit the policy language they intend to use in Alaska. The policy should define *acts of terrorism* in ways that are consistent with the 2007 extension of the Act, Alaska law, and the guidance provided in this bulletin. The definitions,

terms, and conditions should be complete and should accurately describe the coverage that will be provided in the policy. Insurers must withdraw or replace any currently approved forms that do not comply with 2007 extension of the Act.

Policy language for terrorism risk insurance covered under the Act may be filed under the prior approval provisions of AS 21.42.123 or the file and use provisions of AS 21.42.125. Insurers wishing to expedite the review of filings made in response to the 2007 extension should file under the file and use provisions of AS 21.42.125.

Another change introduced in the 2007 extension 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 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. Sample policyholder notices are attached to this bulletin. Insurers may use these policyholder disclosure notices without filing them with the division. 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. A surplus lines insurer must provide disclosure notices to its policyholders through its surplus lines producers.

We encourage filers to take advantage of the SERFF system for submitting filings in response to the 2007 extension.

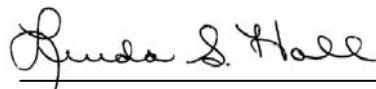
Prohibited Denial of Claim for Causation

Please note that AS 21.36.212 prohibits an insurer from denying a claim if the denial occurs because an excluded risk is in the chain of causes but operates on a secondary basis, when the dominant cause of the loss is a covered risk. This statute applies to all forms filed in response to the 2007 extension and insurers should closely scrutinize their filings for compliance with AS 21.36.212. Examples of language that violate AS 21.36.212 include “directly or indirectly” and “relating to, in whole or in part.” These phrases or similar language appearing in exclusions will not be approved or authorized for use in Alaska.

Expiration Date

This bulletin expires on December 31, 2014, unless Congress extends the duration of the Act.

DATED this 2nd day of February, 2008 at Anchorage, Alaska.



Linda S. Hall
Director

**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

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM
INSURANCE COVERAGE**

Coverage for acts of terrorism is included in your policy. You are hereby notified that under the Terrorism Risk Insurance Act, as amended in 2007, the definition of act of terrorism has changed. 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. Under your coverage, any losses resulting from certified acts of terrorism may be partially reimbursed by the United States Government under a formula established by the Terrorism Risk Insurance Act, as amended. 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 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 exceeds \$100 billion in any one calendar year. If the aggregate insured losses for all insurers exceed \$100 billion, your coverage may be reduced.

The portion of your annual premium that is attributable to coverage for acts of terrorism is _____, and does not include any charges for the portion of losses covered by the United States government under the Act.

I ACKNOWLEDGE THAT I HAVE BEEN NOTIFIED THAT UNDER THE TERRORISM RISK INSURANCE ACT, AS AMENDED, ANY LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM UNDER MY POLICY COVERAGE MAY BE PARTIALLY REIMBURSED BY THE UNITED STATES GOVERNMENT, MAY BE SUBJECT TO A \$100 BILLION CAP THAT MAY REDUCE MY COVERAGE AND I HAVE BEEN NOTIFIED OF THE PORTION OF MY PREMIUM ATTRIBUTABLE TO SUCH COVERAGE.

Policyholder/Applicant’s Signature

Print Name

Date

Name of Insurer: _____
Policy Number: _____

DRAFTING NOTE: An insurer may choose not to use the acknowledgement section for workers compensation.