

STATE OF NEBRASKA

DEPARTMENT OF INSURANCE

 **A. M. Frohman**
Director

January 9, 2008
CB-116



Dave Heineman
Governor

BULLETIN

SUBJECT: FILING PROCEDURES FOR COMPLIANCE WITH PROVISIONS OF THE TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT OF 2007

Background

Because of insurance problems that arose from the attacks of September 11, 2001, Congress enacted and the President signed into law in November 2002, the Terrorism Risk Insurance Act of 2002 (The Act). This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007, and 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 were 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 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 policyholder 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 filings in this state.

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.

The Nebraska Department of Insurance is taking the position that it 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.

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, then no rate filing is required of the insurer unless it plans to use a different loss cost multiplier than it currently has 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.

Rate filings should provide sufficient information for the Department to determine the "manual premium" (but see the following paragraph) for a business seeking to cover *certified losses*. Insurers may choose to use **objective** rating plans, applying to their otherwise filed rates or percentages, 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 Department to determine if the rates are excessive, inadequate or unfairly discriminatory, except that documentation of "manual rates" will not be considered necessary if the manual premium charge is more than 2% of total premium.

With regard to premiums charged to individual commercial policyholders in Nebraska, insurers should note that they have $\pm 40\%$ rating flexibility on policy, and insurers will be free, without any additional rate filing, to use any portion of this rating flexibility to recognize unusual exposures to loss from terrorism. As insurers rarely use this rating device to surcharge accounts for other reasons, this flexibility, when applied to the total manual premium for a policy, will allow an insurer to charge up to 40% of its total premium for almost any individual account's exposure to terrorism. For this reason, the Department does not anticipate that insurers will feel the need to file significant loads or unusual rating plans to recognize exposure to losses arising from terrorism.

As Nebraska is a "file and use" state for affected lines of insurance, and rates can take effect immediately upon receipt without Department approval, the Department does not contemplate any special filing provisions as being necessary for the filing of rates. In general, the Department anticipates that most insurers will either be affiliated with an advisory organization or utilize rates that are already on file.

Insurers not affiliated with an advisory organization, unless their current form filings are already consistent with the Act, as amended, must submit the policy language that they intend to use in this state. Policies should define *acts of terrorism* in ways that are consistent with the Act, as amended, and terms and conditions should completely and accurately describe the coverage provided in the policy. Please note that if an insurer's existing policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, then it is likely that a form filing will be required.

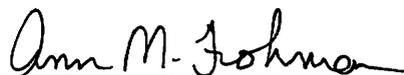
Another change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 is a new disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers must now provide clear 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 Department will not request that insurers file disclosure notices on an informational basis. Rather, if something that an insurer refers to as a "disclosure notice" has the effect of providing or amending coverage, then it must be filed. With that caveat, disclosure notices, whether or not filed, should be clear and not misleading.

Given that the provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 will be in effect almost immediately and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, many states are implementing special filing procedures to permit insurers and advisory organizations to place new rates, policy forms and disclosure notices into immediate use without receiving prior approval from the state's commissioner. Nebraska is "file and use" for insurers with no waiting period for policy forms for affected lines of insurance. The Department will review advisory organization filings as soon as they are received; some advisory organization filings have already been approved. The Department will not backdate approvals to prior to the date that a filing is received by the Department.

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act.



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Director