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Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

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DANIEL R. JUDSON
COMMISSIONER OF INSURANCE

BULLETIN 2015-03

To: All Property And Casualty Insurers Writing Commercial Lines Insurance Products In Massachusetts

From: Daniel R. Judson, Commissioner of Insurance

Date: May 8, 2015

Re: Notice and Filing Procedures for Compliance with the Provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015

This Bulletin 2015-03 (“Bulletin”) is being issued by the Division of Insurance (Division”) to advise you of certain provisions of the recently-enacted Terrorism Risk Insurance Program Reauthorization Act of 2015, Pub. L. 114-1, 129 Stat. 3 (“2015 Act”). The 2015 Act extends the Terrorism Risk Insurance Program Reauthorization Act of 2007, which had amended and extended Terrorism Risk Insurance Extension Act of 2005 and the Terrorism Risk Insurance Act of 2002 (“2002 Act”). The Bulletin addresses standards and procedures to be used by insurers pursuant to the 2015 Act, and supersedes Bulletin 2008-04.

Background and Key Provisions of the 2015 Act

The 2002 Act was enacted a little over a year after the substantial loss of lives and property experienced on September 11, 2001 in New York City, Washington D.C. and Pennsylvania. This federal law provided a federal backstop for defined acts of terrorism and imposed certain obligations on insurers. Since its enactment, the 2002 Act was extended for various periods, and the 2015 Act has now extended the terrorism risk reinsurance program (the “Program”) up through December 31, 2020.

The 2015 Act changed certain provisions previously set forth in the 2002 Act as amended and extended as follows:

- Fixing the Insurer Deductible at 20% of an insurer's direct earned premium of the preceding calendar year and the federal share of compensation at 85% of insured losses that exceed insurer deductibles until January 1, 2016, at which time the federal share shall decrease by 1 percentage point per calendar year until equal to 80%;
- Requiring the Secretary of the Treasury certify "acts of terrorism" under the 2015 Act in consultation with the Secretary of Homeland Security and Attorney General;
- Amending the Program trigger to apply to certified acts with insured losses exceeding \$100,000,000 for calendar year 2015, \$120,000,000 for calendar year 2016, \$140,000,000 for calendar year 2017, \$160,000,000 for calendar year 2018, \$180,000,000 for calendar year 2019, and \$200,000,000 for calendar year 2020 and any calendar year thereafter;
- Increasing the mandatory recoupment of the federal share through policyholder surcharges to 140 percent (from 133 percent) for terrorism loss risk-spreading premiums without regard to uncompensated insured losses for all insurers being greater than the insurance marketplace aggregate retention amount;
- Increasing the amount that insurers must cover as a whole through co-payments and deductibles, which is known in the industry as the aggregate retention, by \$2 billion a year to \$37.5 billion from \$27.5 billion, starting in 2016;
- Requiring the Secretary of the Treasury, not later than nine months after the date of enactment of the 2015 Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary of the Treasury must make an accurate determination on whether to certify an act as an "act of terrorism" under the 2015 Act;
- Requiring insurers participating in the Program to submit to the Secretary of Treasury for a Congressional report to be submitted on June 30, 2016 and every June 30 thereafter, information regarding insurance coverage for terrorism losses in order to evaluate the effectiveness of the Program. The information identified includes: lines of insurance with exposure to terrorism losses, premiums earned on coverage, geographical location of exposures, pricing of coverage, the take-up rate for coverage, the amount of private reinsurance for acts of terrorism purchased and such other matters as the Secretary of the Treasury considers appropriate. This information may be collected by a statistical aggregator and in coordination with State insurance regulatory authorities;
- Requiring the Comptroller General of the United States to complete a study on the viability and effects of the Federal Government assessing and collecting upfront premiums and creating a capital reserve fund;
- Requiring the Secretary of Treasury to conduct a study not later than June 30, 2017 and every June 30 thereafter to identify competitive challenges small insurers face in the terrorism risk insurance marketplace; and
- Requiring the Secretary of the Treasury to appoint an Advisory Committee on Risk-Sharing Mechanisms to provide advice, recommendations and encouragement with respect to the creation and development of nongovernmental risk-sharing mechanisms, with the Advisory Committee composed of nine members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.

Please note that certain provisions of the 2015 Act may require insurers to submit a filing in Massachusetts of disclosure notices, policy language, and applicable rates.

Key Definitions of the 2015 Act

Section 102(1)(A) of the 2015 Act defines the phrase “act of terrorism” as any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, 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) of the 2015 Act 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 (E) of the 2015 Act specify that the such determinations are final and not subject to judicial review and that the Secretary of the Treasury cannot delegate the determination to anyone.

Section 102(1)(D) of the 2015 Act states that “Not later than nine months after the report required under Section 107 of 2015 Act is submitted to the appropriate committees of Congress, the Secretary shall issue final rules governing the certification process, including establishing a timeline for which an act is eligible for certification by the Secretary on whether an act is an act of terrorism under this paragraph.”

The 2015 Act changes the terms “program year” and “transition period” to “calendar year” throughout.

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.

The Division 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 whether 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 2015 Act, 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 2015 Act, state law and the guidance provided in this Bulletin.

Insurers must provide clear and conspicuous disclosure to the policyholder of the existence of the \$100,000,000,000 cap under Section 103(e)(2) of the 2015 Act, at the time of offer and renewal of the policy. The Division notes that the disclosure notices should be filed for informational purposes, 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 Commonwealth. The disclosures should comply with the requirements of the 2015 Act and should be consistent with the policy language and rates filed by the insurer.

Given that the provisions of the 2015 Act are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the provisions of the 2015 Act, the Division will waive checklist and certification requirements for all filings made in connection with the passage of the 2015 Act. The Division will also waive any tolling of any statutory waiting periods in product lines that are subject to “file and use.”

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the form Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing (“Expedited Filing Form”), and certify on the Expedited Filing Form that it is in compliance with the terms of the 2015 Act and the laws of this Commonwealth. A Blank Sample and a Completed Sample of the Expedited Filing Form are both set forth in the Appendix. Completion of the Expedited Filing Form will also relieve an insurer from having to complete any other filing form or supplementary exhibit that is normally required to accompany such filings.

Filers should use the SERFF system for submitting such filings. Filers should use the term “TRIA2015” in the product name field in SERFF to indicate a filing related to terrorism, made in connection with the 2015 Act. In Massachusetts, filers should submit their forms, rates (with any rates changes noted in an actuarial memorandum), disclosures, transmittal and a form utilization list; if utilizing the Expedited Filing Form, the filer should comply with the filing requirements set forth therein.

Provision for Workers' Compensation Policies

Workers' compensation insurance coverage is statutorily mandated for nearly all U.S. employers and exemptions are barred in all states, including Massachusetts. Thus, a business cannot voluntarily waive workers' compensation insurance (or terrorism coverage provided by a workers' compensation insurance policy), nor can an insurer exempt terrorism risk from a workers' compensation policy.

Department of the Treasury's Interim Guidance Concerning the 2015 Act

The United States Department of the Treasury ("Treasury") has issued an Interim Guidance Concerning the 2015 Act ("Interim Guidance") in order to address the application of certain provisions of 2015 Act. In the Interim Guidance, Treasury states that it expects to issue a proposal to amend the Program regulations 31 CFR Part 50, and that the Interim Guidance may be relied upon by members of the public until superseded by the Program regulations, as amended, or by subsequent guidance.

The Interim Guidance notes that the Program regulations provide that an insurer may use NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2, or other disclosures that meet the requirements of the Program regulations to fulfill the disclosure requirements set forth in the 2015 Act. The Interim Guidance states that NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2, as amended in 2015, are consistent with the disclosure requirements of the Program regulations and the 2015 Act. Samples of the 2015 versions of the NAIC Model Disclosure Form No. 1 and NAIC Model Disclosure Form No. 2 are set forth in the Appendix.

An insurer is not required to use either NAIC Model Disclosure Form No. 1 or NAIC Model Disclosure Form No. 2 to satisfy the 2015 Act's disclosure requirement. An insurer may use other means to comply with the disclosure requirement, as long as the disclosure comports with the requirements of the 2015 Act.

Effective Date

This Bulletin shall take immediate effect.

Any questions regarding this Bulletin should be directed to Robert A. Whitney, Deputy Commissioner and General Counsel, at (617) 521-7308, or robert.a.whitney@state.ma.us.

APPENDIX

SAMPLE BLANK FILING FORM

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

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

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document.
- One copy of each endorsement, disclosure form and/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, if applicable.
- The appropriate filing fees, if applicable

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state
- Is in compliance with state's requirements with respect to terrorism coverage; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with a prompt for an Adobe electronic signature.]

SAMPLE COMPLETED FILING FORM

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

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

This abbreviated filing transmittal document should be used in conjunction with a SERFF filing only.

To be complete, a filing must include the following:

- A completed Expedited Filing Transmittal Document.
- One copy of each endorsement, disclosure form and/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, if applicable.
- The appropriate filing fees, if applicable

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

- Is in compliance with the terms of the Terrorism Risk Insurance Act, as amended, and/or the laws of this state
- Is in compliance with state's requirements with respect to terrorism coverage; and
- Is in compliance with the requirements of the bulletin containing the voluntary expedited filing procedures.

Electronic Signature: [This would be replaced with an actual Adobe electronic signature.]

SAMPLE NAIC DISCLOSURE NO. 1

**POLICYHOLDER DISCLOSURE
NOTICE OF TERRORISM INSURANCE COVERAGE**

You are hereby notified that under the Terrorism Risk Insurance Act, as amended, 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 consultation with the Secretary of Homeland Security, 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% THROUGH 2015; 84% BEGINNING ON JANUARY 1, 2016; 83% BEGINNING ON JANUARY 1, 2017; 82% BEGINNING ON JANUARY 1, 2018; 81% BEGINNING ON JANUARY 1, 2019 and 80% BEGINNING ON JANUARY 1, 2020] 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

<input type="checkbox"/>	I hereby elect to purchase terrorism coverage for a prospective premium of \$_____.
<input type="checkbox"/>	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

SAMPLE NAIC DISCLOSURE NO. 2

**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 2015, 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 consultation with the Secretary of Homeland Security, 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% through 2015; 84% beginning on January 1, 2016; 83% beginning on January 1, 2017; 82% beginning on January 1, 2018; 81% beginning on January 1, 2019 and 80% beginning on January 1, 2020] 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 AND 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: _____