COMMONWEALTH OF MASSACHUSETTS
Office of Consumer Affairs and Business Regulation
DIVISION OF INSURANCE

One South Station • Boston, MA 02110-2208
(617) 521-7794 • FAX (617) 521-7475
TTY/TDD (617) 521-7490
http://www.state.ma.us/doi

MITT ROMNEY
GOVERNOR

KERRY HEALEY
LIEUTENANT GOVERNOR

BETH LINDSTROM
DIRECTOR, CONSUMER AFFAIRS AND BUSINESS REGULATION

JULIANNE M. BOWLER
COMMISSIONER OF INSURANCE

Bulletin 2005-01

TO: **Insurers Offering Property and Casualty Policies in Massachusetts**

FROM: **Julianne M. Bowler, Commissioner of Insurance** Julianne M Bowler

DATE: **January 14, 2005**

RE: **Massachusetts Form and Rate Filing Requirements and Procedures to Supplement Bulletin 2004-10 Regarding Uncertainty Related to Expiration of the Terrorism Risk Insurance Act of 2002 ("TRIA")**

On November 19, 2004, the Division of Insurance ("Division") released Bulletin 2004-10 regarding "Uncertainty Related to Expiration of the Terrorism Risk Insurance Act of 2002 ("TRIA") Exclusions Related to Acts of Terrorism." The Division is issuing this bulletin to address three issues that have arisen in the course of discussing the processes necessary to implement Bulletin 2004-10.

First, when the Division issued Bulletin 2002-18 regarding "Massachusetts Form and Rate Filing Requirements and Procedures under the Terrorism Risk Insurance Act of 2002," the Division had written that for "the purposes of terrorism exclusions and/or limitations, the Division is waiving the usual filing requirements of 1) the lockbox form; 2) the filing fee; and 3) the checklist(s)." Please note that this provision only applies to forms submitted under Bulletin 2002-18 and does not apply to forms submitted under Bulletin 2005-01.

Second, in Bulletin 2004-10, the Division noted that it will not accept terrorism exclusions for workers' compensation, automobile or fire coverage which are not permitted under Massachusetts law. Following further review, it appears that while such exclusions are not permitted for use with private passenger automobile insurance policies, they are permitted for use with commercial automobile insurance policies. This bulletin is being sent partly to confirm that the Division will permit the filing of such endorsements for use with commercial automobile insurance policies.

Third, among the provisions of Bulletin 2004-10, the Division indicated that it would permit insurers to use conditional terrorism endorsements that may exclude or limit coverage, provided that the insurer obtains, on the endorsement or associated document, the insured's signature in which the insured indicates that he or she understands that without an extension

of TRIA, the policy's coverage for terrorism-related claims will change as described in the endorsement. Following additional consideration of this issue, the Division is also sending this bulletin to notify insurers that the Division, as an acceptable alternative to the signature requirements of Bulletin 2004-10, will permit carriers to submit conditional endorsements for review and approval by the Division, provided that they submit a certification with the Division that it is in compliance with the appropriate requirements of Bulletins 2004-10 and 2005-01 and has instituted the following procedures to:

1. Make coverage for certified acts of terrorism available in accordance with Section 103 (c) of the Terrorism Risk Insurance Act 2002 ("TRIA");

2. Provide clear and conspicuous disclosure of the premium for such coverage in accordance with Section 103 (b) of TRIA; and

3. Independent from (or in addition to) any conditional endorsement, provide a clear and conspicuous notice at the time that a new policy is offered or issued or a policy is renewed of any change in coverage for losses resulting from an act of terrorism if TRIA terminates or is extended under different terms. The change in coverage will apply regardless of whether the insured elected to purchase coverage for certified acts of terrorism at the inception of the policy.

An insurer may comply with this certification by using the form attached as Exhibit "A" to this Bulletin or any other form or certification that includes the elements in the paragraph above. This requirement also applies to any insurer that is relying on a filing submitted on its behalf by a licensed rating organization.

Although insurers are not required to submit the notice required under item 3 for review, the Division would like insurers to be aware that it considers the notice attached as Exhibit "B" as an example of an appropriately clear and conspicuous notice to be used as an alternative to the signature requirements of Bulletin 2004-10.

Exhibit "A"

CERTIFICATION OF COMPLIANCE WITH MASSACHUSETTS DIVISION OF INSURANCE BULLETIN #_____

Insurer or Insurer Group Name: _____

NAIC Insurer (or Group) Number or TIN (if no NAIC #): _____

If insurer is residual market mechanism allocating losses, enter loss allocation date: _____

Program (calendar) Year:_____

I hereby certify that [Insurer] has in place procedures to:

1. Make coverage for certified acts of terrorism available in accordance with Section 103 (c) of the Terrorism Risk Insurance Act 2002 ("TRIA");
2. Provide clear and conspicuous disclosure of the premium for such coverage in accordance with Section 103 (b) of TRIA; and
3. Provide a clear and conspicuous notice at the time that a new policy is offered or issued or a policy is renewed of any change in coverage for losses resulting from an act of terrorism if TRIA terminates or is extended under different terms. The change in coverage will apply regardless of whether the insured elected to purchase coverage for certified acts of terrorism at the inception of the policy.

_____ _____ _____

Name Title Date

_____

Signature

Exhibit "B"

FOR USE WITH: IL 09 95 Conditional Exclusion Of Terrorism (Relating To Disposition Of Federal Terrorism Risk Insurance Act Of 2002)

NOTICE TO POLICYHOLDERS

POTENTIAL RESTRICTIONS OF TERRORISM COVERAGE

This Notice has been prepared in conjunction with the **POTENTIAL** implementation of changes related to coverage of terrorism under your policy.

The Terrorism Risk Insurance Act of 2002 established a program (Terrorism Risk Insurance Program) within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks. That Program will terminate at the end of December 31, 2005 unless extended by the federal government. Your policy will become effective (or will be renewed) while the federal Program is still in effect, but prior to a decision by the federal government on extension of the federal Program. If the federal Program terminates, or is extended with certain changes, during the term of your policy, then the treatment of terrorism under your policy will change. This Notice is being provided to you for the purpose of summarizing potential impact on your coverage. The summary is a brief synopsis of significant exclusionary provisions and limitations.

This Notice does **not** form a part of your insurance contract. The Notice is designed to alert you to coverage restrictions and to other provisions in certain terrorism endorsement(s) in this policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

Carefully read your policy, including the endorsements attached to your policy.

YOUR POLICY AT START OF NEW POLICY TERM:

This policy does not contain a terrorism exclusion. In the absence of a terrorism exclusion, terrorism coverage applies in accordance with the terms of the policy. That is, the absence of a terrorism exclusion does not create coverage for any loss that would otherwise be excluded under the policy, such as losses excluded by the nuclear hazard or war exclusions.

POTENTIAL CHANGE DURING THE TERM OF YOUR POLICY:

Endorsement IL 09 95 is attached to your policy. Its provisions will become applicable to your policy only if certain events (one or more of them) occur. Those events include the following:

- If the federal Terrorism Risk Insurance Program (TRIP) terminates with respect to the type of insurance provided under this policy. (TRIP is scheduled to terminate at the end of December 31, 2005 unless extended by the federal government.); or
- If TRIP is extended with changes that redefine terrorism, and we are not required to make such revised coverage available to you; or
- If TRIP is extended with changes that make insurance coverage for terrorism subject to provisions or requirements that differ from those that apply to other events or occurrences under this policy, and we are not required to make such revised coverage available to you; or

© ISO Properties, Inc., 2004

- If TRIP is extended with changes that increase insurers' statutory percentage deductible under TRIP for terrorism losses, or decrease the federal government's statutory percentage share in potential terrorism losses, and we are not required to make terrorism coverage available to you. Our deductible in 2004 is 10% of the total of our previous year's direct earned premiums. In 2005, that figure is 15%. The government's share is 90% of the terrorism losses paid by us above the deductible.

Endorsement IL 09 95 treats terrorism as follows:

Coverage for loss or damage arising out of a terrorism incident is excluded only if:

- The total of all insured damage to all types of property (including business interruption losses sustained by owners or occupants of damaged property), from the incident, exceeds $25 million. The $25 million property damage threshold is based on losses sustained by all persons and entities who are affected by an incident of terrorism, and who are insured for the damage, or who would be insured but for a terrorism exclusion; **or**

  (To determine whether the threshold for property damage ($25 million) is exceeded, multiple incidents of terrorism which occur within a seventy-two hour period and appear to be linked together or have a related purpose or common leadership behind them shall be considered to be one incident of terrorism.)

- The terrorism event involves nuclear materials or results in nuclear reaction or radiation or radioactive contamination; **or**
- The terrorism event involves the release of radioactive material, and it appears that one purpose of the terrorism was to release such material; **or**
- The terrorism event is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; **or**
- The terrorism event involves the release of pathogenic or poisonous biological or chemical materials, and it appears that one purpose of the terrorism was to release such materials.

The Exception Covering Certain Fire Losses applies only in certain states. If the exception applies in any states under your policy, that is indicated in the Schedule of the terrorism endorsement. If the Exception applies, the Schedule indicates the affected types of insurance in affected states. When the Exception applies, the exclusion of terrorism does not apply to direct loss or damage by fire to Covered Property, with respect to affected types of insurance in affected states.

See the definition of terrorism for purposes of the terrorism exclusion.

© ISO Properties, Inc., 2004