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BULLETIN 2008-04

TO: ALL PROPERTY & CASUALTY INSURERS WRITING COMMERCIAL LINES INSURANCE PRODUCTS AND ALL INSURERS ON THE NAIC QUARTERLY LISTING OF ALIEN INSURERS

FROM: NONNIE S. BURNES, Commissioner of Insurance

DATE: JANUARY 18, 2008

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

This bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2007 (the "2007 Reauthorization") that amends the Terrorism Risk Insurance Act of 2002 ("the Act"). It addresses standards and procedures to be used by insurers pursuant to the Act, as amended by both the Terrorism Risk Insurance Extension Act of 2005 (the "2005 Extension") and the 2007 Reauthorization. This bulletin supersedes Bulletin 2006-01.

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 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.

In November 2002, Congress enacted, and the President signed into law, the Act. This federal law provides a federal backstop for defined acts of terrorism and imposes certain

obligations on insurers. In 2005, the Act was extended for two years, 2006 and 2007. The 2007 Reauthorization extends the Act for an additional seven years, through December 31, 2014.

The 2007 Reauthorization changes numerous provisions of the Act. Some of such changes include:

- Revising the definition of a certified act of terrorism to eliminate the requirement that an individual(s) must be acting on behalf of a *foreign* person or a *foreign* interest.
- Requiring that insurers provide a clear and conspicuous notice to policyholders of the existence of the $100 Billion liability cap.
- Setting 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.
- Setting the program trigger at $100 Million for each of the years through 2014.
- Requiring the U.S. Treasury to promulgate regulations for determining pro-rata shares of insured losses under the program when insured losses exceed $100 Billion.
- 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 2007 Reauthorization.
- Requiring the Comptroller General to determine whether specific markets exist 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 Reauthorization.
- 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.

Definition of Act of Terrorism

One of the changes under the 2007 Reauthorization was a revision to the definition of "act of terrorism." The change eliminates the requirement that one or more individuals commit an act of terrorism on behalf of a foreign person or foreign interest. This means that acts formerly referred to as "domestic" terrorism now may be certified as acts of terrorism under The Act.

Section 102(1) defines an *act of terrorism* for purposes of The Act. The unmodified reference to "the Secretary" refers to the Secretary of the Treasury. The revised Section 102(1)(A) states, "[t]he 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 Act, as amended, contains a program trigger of $100 Million in aggregate industry insured losses resulting from a certified act of terrorism before federal reimbursement is triggered pursuant to Section 102(1)(B).

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 Commonwealth will accept filings that contain a specified percentage of premium to provide for coverage for *certified losses*. Insurers also may 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 articulate in its filing the basis 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.

Insurers subject to policy form regulation must submit the policy language that they intend to use in the Commonwealth. The policy should define *acts of terrorism* in ways that are consistent with The Act, as amended, and state law. 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 Act, as amended, state law and the requirements of this bulletin. If policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, however, it is likely that an amendment is required.

The 2007 Reauthorization also provides for a new disclosure requirement for any policy issued after its enactment. Insurers must now provide clear and conspicuous disclosure to the policyholder of the existence of the $100 Billion liability cap under Section 103(e)(2) at the time of the offer, purchase and renewal of the policy.

The Division of Insurance ("Division") requests that carriers file the disclosure notices for informational purposes, along with the policy forms, rates and rating systems. All of these documents are an integral part of the of the notification process for policyholders in this state. All such notices should be clear must not be misleading. Further, the disclosures should comply with the requirements of The Act, as amended, and should be consistent with the policy language and rates filed by the insurer.

Given that the provisions of the 2007 Reauthorization are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of The Act, the Division will waive checklist and certification requirements for all filings made in connection with passage of The Act, as amended. The Division also will waive the tolling of any statutory waiting periods in product lines that are subject to "file and use."

We encourage insurers to take advantage of the SERFF system for submitting such filings, and will permit any other state requirement (e.g., filing forms, supplemental exhibits, etc.) to be bypassed similarly.

This expedited filing system shall remain in effect until April 1, 2008.

Optional Provision for Standard Fire Policy States

The requirements for fire coverage in the Commonwealth are established by law and, where applicable, must meet or exceed the provisions of the Standard Fire Policy. These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

Effective Date

This bulletin shall take effect immediately and shall expire on December 31, 2014, unless Congress extends The Act, as amended. The expedited filing procedures referenced in this bulletin shall expire on April 1, 2008.