



Illinois Department of Insurance

BRUCE RAUNER
Governor

JAMES A. STEPHENS
Acting Director

February 23, 2015

TO: All Illinois Licensed Property and Casualty Insurance Companies

FROM: James A. Stephens, Acting Director of Insurance JAS

RE: CB 2015-03 – Terrorism Risk Insurance Program Reauthorization Act of 2015 and Filing Procedures and Requirements for Terrorism Related Forms, Rules and Rates

REPLY TO: For forms filing questions, please email:
Keith Fanning, P&C Compliance Unit; Email: keith.fanning@illinois.gov

For questions regarding policy renewal, cancellation, or nonrenewal, please email:
Robert Rapp, Consumer Services Unit; Email: robert.rapp@illinois.gov

The purpose of this bulletin is to advise you of certain provisions of the Terrorism Risk Insurance Program Reauthorization Act of 2015 amending and extending the Terrorism Risk Insurance Act of 2002 (the Act) by reauthorization, which may require insurers to submit a filing in this state of disclosure notices, policy language, and applicable rates as a result of the Act. For further details related to the Act, please consult the Act itself.

Background

Uncertainty in the markets for commercial lines property and casualty insurance coverage arose following the substantial loss of lives and property experienced on September 11, 2001. Soon after these tragic events, many reinsurers announced that they would no longer 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 facilitate the ability of the insurance industry to continue 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 (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 for an additional seven years through December 31, 2014 with the enactment of the Terrorism Risk Insurance Program

Reauthorization Act of 2007. The Act has now been extended again with the enactment of the Terrorism Risk Insurance Program Reauthorization Act of 2015. The reauthorized Act, as amended and extended, included several changes including

- Extending the program through December 31, 2020.
- 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 in consultation with the Secretary of Homeland Security.
- Amending the program trigger to apply to certified acts with insured losses exceeding \$100 million for calendar year 2015, \$120 million for calendar year 2016, \$140 million for calendar year 2017, \$160 million for calendar year 2018, \$180 million for calendar year 2019, and \$200 million for calendar year 2020 and any calendar year thereafter.
- The mandatory recoupment of the federal share through policyholder surcharges increasing to 140 percent (from 133 percent).
- The insurance marketplace aggregate retention amount being the lesser of, \$27.5 billion, increasing annually by \$2 billion until it equals \$37.5 billion, and the aggregate amount of insured losses for the calendar year for all insurers. In the calendar year following the calendar year in which the marketplace retention amount equals \$37.5 billion, and beginning in calendar year 2020 it is revised to be the lesser of the annual average of the sum of insurer deductibles for all insurers participating in the Program for the prior 3 calendar years as such sum is determined by the Secretary of the Treasury by regulation.
- Requiring the Secretary of the Treasury, not later than 9 months after the date of enactment of the Act, to conduct and complete a study on the certification process, including the establishment of a reasonable timetable by which the Secretary must make an accurate determination on whether to certify an act as an act of terrorism.
- Requiring insurers participating in the Program to submit to the Secretary of the 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 to be provided 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 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.
- 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.

The Advisory Committee will be composed of 9 members who are directors, officers, or other employees of insurers, reinsurers or capital market participants.

- Changing the terms “program year” and “transition period” to “calendar year” throughout.

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

The bulletin is divided into the following sections:

- I. Important Provisions in the Act and the 2015 Extension**
- II. Standard Fire Policy Language Exception**
- III. Provision for Workers’ Compensation Policies**
- IV. Requirements Regarding the \$5,000,000 Threshold and \$100 billion Cap**
- V. Exclusions or Limitations for Lines of Business Not Defined as “Property and Casualty Insurance” under the Act**
- VI. Requirements for Expedited Filing Review**
- VII. Information about Commercial Forms and Rates/Rating System and Rating Rules Required to be Filed in Illinois**
- VIII. Additional Reminders for All Companies**
- IX. Withdrawal of Company Bulletin 2008-01**
- X. Effective Date**

I. Important Provisions in the Act and the 2015 Extension

Definition of insurers that must participate in the Terrorism Insurance Program (the Program)

Section 102(6) of the Act defines “insurer” as “any entity, including any affiliate thereof (A) that is (i) licensed or admitted to engage in the business of providing primary or excess insurance in any State; (ii) not licensed or admitted as described in clause (i), if it is an eligible surplus line carrier listed on the Quarterly Listing of Alien Insurers of the NAIC, or any successor thereto; (iii) approved for the purpose of offering property and casualty insurance by a Federal agency in connection with maritime, energy, or aviation activity; (iv) a State residual market insurance entity or State workers’ compensation fund; or (v) any other entity described in section 103(f), to the extent provided in the rules of the Secretary issued under section 103(f); (B) that receives direct earned premiums for any type of commercial property and casualty insurance coverage, other than in the case of entities described in sections 103(d) and 103(f); and (C) that meets any other criteria that the Secretary may reasonably prescribe.

Definition of “Property and Casualty Insurance”

Section 102(12) of the Act defines “property and casualty insurance” as: (A) commercial lines of property and casualty insurance, including excess insurance, workers’ compensation insurance, and directors and officers liability insurance; and (B)

does not include (i) Federal crop insurance issued or reinsured under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.), or any other type of crop or livestock insurance that is privately issued or reinsured; (ii) private mortgage insurance (as that term is defined in section 2 of the Homeowners Protection Act of 1998 (12 U.S.C. 4901)) or title insurance; (iii) financial guaranty insurance issued by monoline financial guaranty insurance corporations; (iv) insurance for medical malpractice; (v) health or life insurance, including group life insurance; (vi) flood insurance provided under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq); (vii) reinsurance or retrocessional reinsurance; (viii) commercial automobile insurance; (ix) burglary and theft insurance; (x) surety insurance; (xi) professional liability insurance; or (xii) farm owners multiple peril insurance.

Definition of “Act of Terrorism”

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 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) 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) 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.

Mandatory availability of terrorism coverage

All insurers, as defined in the Act in Section 102(6), are required by the Act to participate in the Terrorism Insurance Program (the Program) and make available coverage for insured losses in all of their covered commercial lines policies. Such coverage shall not differ materially from the terms, amounts or other coverage limitations applicable to losses arising from events other than acts of terrorism.

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 Act, as amended, 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 Act, as amended, state law and the requirements of this bulletin.

Disclosure notice requirements

A change introduced in the Terrorism Risk Insurance Program Reauthorization Act of 2007 was a disclosure requirement for any policy issued after the enactment of the Act. Specifically, in addition to other disclosure requirements previously contained in TRIA, insurers since 2007 have had to provide clear and conspicuous disclosure to the policyholder of the existence of the \$100 billion cap under Section 103(e)(2), at the time of offer and renewal of the policy.

The DOI requests that the disclosure notices be filed for informational purposes. The disclosures should comply with the requirements of the Act, as amended, and should be consistent with the policy language filed by the insurer. The Department of the Treasury Interim Guidance states that insurers should provide disclosures and offers that comply with the Program regulations and TRIA, as amended by the 2015 Reauthorization Act, as soon as possible and not later than April 13, 2015.

Insurers that adopt the attached NAIC model disclosure notifications without change are not required to file such notifications, as long as they advise the DOI of the adoption with no change.

II. Standard Fire Policy Language Exception

Any terrorism exclusion or limitation language must include an exception for fire following a terrorism loss. This provision does not apply to exclusions or limitations for terrorism losses that exceed the Act's \$100 billion cap. To ensure that the form language is clear and unambiguous to the policyholder, the standard fire policy exception language must be included on the terrorism coverage exclusion or limitation form. Insureds may not waive this statutorily mandated coverage.

III. 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. 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.

IV. Requirements Regarding the \$5,000,000 Threshold and \$100 billion Cap

The Illinois Department of Insurance (DOI) 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) of the Act 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.

V. Exclusions or Limitations for Lines of Business Not Defined as “Property and Casualty Insurance” under the Act

Consistent with the DOI past position and practices, terrorism exclusions or limitations on personal lines policies and coverages will be prohibited.

Consistent with DOI past position and practices, some limitations in coverage for acts of terrorism for certain commercial lines of business not defined as “property and casualty insurance” as defined in the Act will be allowed, subject to the following provisions:

For policies providing property insurance coverage the following limitations apply:

- Exclusions for acts of terrorism apply only if the act(s) of terrorism result(s) in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72-hour period;
- Exclusions for acts of terrorism are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
 - Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

For policies providing liability insurance coverage, the following limitations apply:

- Exclusion for acts of terrorism apply only if the act(s) of terrorism result(s) in industry-wide insured losses that exceed \$25,000,000 for related incidents that occur within a 72- hour period; or
- Fifty or more persons sustain death or serious physical injury for related incidents that occur within a 72-hour period. For purposes of this provision serious physical injury means:
 - Physical injury that involves a substantial risk of death;
 - Protracted and obvious physical disfigurement; or
 - Protracted loss of or impairment of the function of a bodily member or organ.
- Exclusions for acts of terrorism are not subject to the limitations above if:
 - The act involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination;
 - The act is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or

- Pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials.

Any previously filed and accepted terrorism exclusions or limitations for lines of business not defined as “Property and Casualty Insurance” under the Act are still valid in Illinois to the extent that they do not conflict with the Act or the 2015 Extension.

VI. Requirements for Expedited Filing Review

Illinois will voluntarily expedite all terrorism related form and rate filings until April 1, 2015, giving first preference to form filings that must comply with the 2015 extension changes to the Act.

Illinois law is very specific regarding which insurers must file forms, rates/rating systems/rating rules with the DOI and for which lines of business such forms/rates/rules must be filed. To assist the DOI in expediting review of your required forms/rates/rating systems/rating rules, please do not file non-required forms/rates/rating systems/rating rules unless specifically asked to do so. If you are unsure which insurers, or which commercial forms/rates must be filed, please read Section VII below.

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 Terrorism Risk Insurance Program Reauthorization Act of 2015.

VII. Information about Commercial Forms and Rates/Rating System and Rating Rules Required to be Filed in Illinois

Commercial forms required to be filed

The Act does not change state laws regarding which insurers must file forms with the Director.

Illinois law [215 ILCS 5/143] requires all companies writing lines of insurance found in Class 2 (except accident and health), and Class 3 of Section 4 of the Illinois Insurance Code to file policy forms, endorsements, etc., except for the following: forms issued by surplus lines companies, risk retention groups, syndicates, licensed captives, or farm mutuals, surety contracts or fidelity bonds, forms issued to “industrial insureds” as defined in Section 1212.08 (except for Workers’ Compensation policies), and manuscript forms issued to individual risks.

Section 143(2) of the Illinois Insurance Code {215 ILCS 5/143(2)} permits the Director of Insurance to disapprove any policy form, rider, certificate, application blank or other material if it: (i) violates any provision of the Illinois Insurance Code; (ii) contains inconsistent, ambiguous, or misleading clauses, or (iii) contains exceptions and conditions that will unreasonably or deceptively affect the risks that are purported to be assumed by the policy. If the Director disapproves a policy or form under Section

143(2), the Director may order the insurer to discontinue its use.

Commercial rates/rating systems/rating rules required to be filed in Illinois

a) Insurers that must file rates/rating systems/rating rules

The Act does not change state laws or regulations regarding which insurers must file commercial lines rates/rating systems/rating rules in Illinois. Only licensed insurers must file rates/rating systems/rating rules in Illinois. Section 445(12) of the Illinois Insurance Code exempts surplus lines insurers from filing rates/rating systems/rating rules. In addition, risk retention groups, syndicates, farm mutuals, and licensed captives are not required to file rates/rating systems/rating rules.

b) Form RF-3 rating information required to be filed

A Form RF-3 must be filed for any rate level change affecting any of the kinds of business enumerated in Class 2 and Class 3 of Section 4 of Illinois Insurance Code. Form RF-3s are required of all insurers except for the following exceptions: surplus lines, farm mutuals, reinsurance, ocean marine, aircraft, title insurance, accident and health, risk retention groups, self-insured captives, inland marine risks which by general custom are not written according to manual rates or rating plans; and individually rated risks.

NOTE: If a rate change includes an increase or decrease in rate level due to terrorism, please state so in the Form RF-3 section titled “Brief description of filing.”

c) Rates/rating systems/rating rules required to be filed

The Act does not change state laws regarding which commercial lines rates and rules must be filed with the Director.

Administrative Rules 754, 929, 2302, and 2902 (Title 50, IL Adm Code), require only the following commercial lines rates/rating systems and rating rules to be filed in Illinois:

- taxicab,
- liquor liability,
- medical malpractice (not subject to the Act),
- workers’ compensation, and
- group inland marine.

NOTE: All other commercial lines rates/rating systems and rating rules are not required to be filed with the DOI.

VIII. Additional Reminders for All Companies

Insurers must comply with all laws regarding cancellation of commercial insurance policies, including but not limited to the following provisions: Sections 143.14, 143.16, 143.16a, and 143.23 of the Illinois Insurance Code.

Insurers must comply with all laws regarding renewal and nonrenewal of commercial insurance policies, including but not limited to, the following: Sections 143.17 and 143.17a of the Illinois Insurance Code pertaining to nonrenewal of commercial insurance policies and renewal of commercial insurance policies with material change in coverages, deductibles or increase in premium.

IX. Withdrawal of Company Bulletin 2008-01

The DOI has included in this bulletin any provisions that remain in effect from previously issued Company Bulletin 2008-01. Company Bulletin 2008-01 is hereby withdrawn and is no longer effective.

X. Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2020, unless Congress extends the duration of the Act. The voluntary expedited filing procedures discussed in this bulletin shall expire on April 1, 2015.

**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 or acts that are 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

	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 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 or acts that are 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: _____

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