



OKLAHOMA INSURANCE DEPARTMENT
STATE OF OKLAHOMA

BULLETIN NO. PC 2007-03

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

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

From: KIM HOLLAND, INSURANCE COMMISSIONER

DATE: DECEMBER 31, 2007

The intent of this bulletin is to advise property and casualty insurers of certain provisions of the Terrorism Risk Insurance Program Reauthorization Extension Act of 2007, current requirements regarding terrorism coverage and property and casualty form and rate/rule filings in Oklahoma. To the extent that any provision of this bulletin contradicts any provision of a prior bulletin regarding the Terrorism Risk Insurance Act of 2002 or its 2005 extension, this bulletin is controlling.

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. 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 provides a federal backstop for defined acts of terrorism and imposes certain obligations on insurers. The Act was extended for a two-year period covering Program Years 2006 and 2007. The Act 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 have 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 policyholders surcharges.

Other terms of the Act, as amended by the Terrorism Risk Insurance Extension Act of 2005, remain unchanged.

Certain provisions of the Act, as extended, may require insurers to submit a filing in this state of the disclosure notices, policy language and the applicable rates as a result of the Terrorism Risk Insurance Program Reauthorization Act of 2007. **As is the case with all filings, Oklahoma requires the form filing to be submitted separately from the rate and manual rule filing.**

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.

This state 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 may exclude or limit coverage 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, 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*. This state 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 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 this state. The policy should define *acts of terrorism* and both *certified* and *non-certified* losses 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. However, if policy forms make a distinction between acts of a foreign person or foreign interest and a domestic person or domestic interest, it is likely that a filing is 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 also 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 Commissioner requests that the disclosure notices 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 state. 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 Terrorism Risk Insurance Program Reauthorization Act of 2007 are already in effect, and insurers and advisory organizations must accelerate filing activity in order to achieve compliance with the revised provisions of TRIA, this state will permit insurers and advisory organizations to place new policy forms and disclosure notices **into immediate use without waiting for the tolling of the statutory waiting period.**

If an insurer wants to take advantage of this voluntary speed to market initiative for revised terrorism products, it should complete the attached Expedited Filing Transmittal Document for Terrorism Risk Insurance Forms and Pricing, and certify on the form that it is in compliance with the terms of the Terrorism Risk Insurance Program Reauthorization Act of 2007 and the laws of this state. The transmittal forms have been designed for either a form filing or a rate/rule filing. **Since form filings cannot be combined with rate/rule filings in Oklahoma, complete the transmittal forms appropriately for the specific type of filing being made.**

To be complete, an expedited filing must include the following:

- 1. A completed, certified Expedited Filing Transmittal Document for each insurer or advisory organization.**
- 2. One copy of each policy form or endorsement that the insurer intends to use, unless the insurer has given an advisory organization authorization to file them on its behalf.**
- 3. A copy of the rates and rating systems along with the supporting documentation, if required.**
- 4. A copy of any disclosure notices that will be used to convey information to policyholders in this state.**
- 5. The appropriate filings fees, \$100 per company for rate or rule filings, \$50 per company for form filings.**
- 6. A postage-paid, self-addressed envelope large enough to accommodate the return.**

We encourage filers to take advantage of the SERFF system for submitting such filings.

This voluntary expedited filing system shall remain in place until April 1, 2008. If an insurer does not want to take advantage of the expedited filing system (or cannot file prior to April 1, 2008) then it must submit a normal filing, subject to regular filing requirements, including any prior approval or waiting period.

Optional Provision for Standard Fire Policy States

In Oklahoma, the requirements for fire coverage are established by law and where applicable, must meet or exceed the provisions of the Standard Fire Policy. **Please review Okla. Stat. tit. 36, section 4801 et seq.** These legal requirements cannot be waived. Thus, a business cannot voluntarily waive this statutorily mandated coverage.

Effective Date

This bulletin shall take immediate effect and shall expire on December 31, 2014, unless Congress extends the duration of the Act. The expedited filing procedures discussed in this bulletin shall expire on April 1, 2008.

Questions regarding this bulletin should be directed to Kathie Stepp at kathiestepp@insurance.state.ok.us of the Property and Casualty Division or Susan Dobbins at susandobbins@insurance.state.ok.us of the Legal Division of the Oklahoma Insurance Department.

The Oklahoma Insurance Department encourages readers of this bulletin to periodically check the Department's web site <http://www.oid.state.ok.us/index.asp> for news and updates to Bulletins and other relevant material.